



Journal of the Senate

Number 5

September 14, 1978

SITTING AS COURT OF IMPEACHMENT

The Senate, sitting as a court for the trial of Articles of Impeachment against the Honorable Samuel S. Smith, Circuit Court Judge of the Third Judicial Circuit of the State of Florida, convened at 9:00 a.m.

The Chief Justice presiding

The Managers on the part of the House of Representatives, Honorable William J. Rish, Honorable H. Lee Moffitt and Honorable Ronald R. Richmond, and their counsel, Honorable Marc H. Glick, were present at the Managers' table.

Counsel for the Respondent, Honorable Ronald K. Cacciatore and Honorable Robert H. Nutter, were present at the Respondent's table.

A quorum present—36:

Barron	Gordon	McClain	Spicola
Brantley	Gorman	Myers	Thomas, Jon
Chamberlin	Graham	Peterson	Thomas, Pat
Childers, Don	Hair	Plante	Tobiassen
Childers, W. D.	Henderson	Poston	Trask
Dunn	Holloway	Renick	Vogt
Firestone	Johnston	Scarborough	Ware
Gallen	Lewis	Scott	Williamson
Glisson	MacKay	Skinner	Wilson

Prayer by Senator Lewis:

Our Heavenly Father, as we contemplate the deliberations today, probably the singular most serious thing that we do here at any time, send Your holy spirit to lead us to help us make our decisions not based on what may be popular but what is the right thing to do. Please give us Thy strength to carry out Your will. Amen.

JUSTICE ENGLAND: In the absence of any objection, we will dispense with the reading of the journal of yesterday. Are there any corrections to the journal? Show that there are no corrections for the record.

I would like to note for the record the presence of the Board of Managers, Messrs. Rish, Moffitt and Richmond and Counsel for the Respondent, Mr. Cacciatore and Mr. Bob Nutter.

Senators, I would like to call your attention to Rule 28 adopted for these proceedings in light of the number of questions which have come up in the last day or two. That rule provides that Senators may be excused from further duty in these proceedings in the case of emergency. And having been excused, the member shall not participate further in the proceedings. There are a number of reasons why people may need to be away. If they're in the emergency category, under the rules you have adopted, that will preclude further participation in these proceedings.

Obviously, the sense of that is that you act very much as a jury and if the jury or a juror is absent during part of the deliberations and misses some of the testimony, he cannot participate fully in the deliberations having only part of the

information available. So I urge you to seek absences or recusals, if you must, with the greatest caution so that you can fully participate in these proceedings.

SENATOR BRANTLEY: Mr. Chief Justice?

JUSTICE ENGLAND: Senator Brantley.

SENATOR BRANTLEY: On that rule, would it be the feeling of the Chief Justice that if a member, for instance, had to be excused for an hour or perhaps longer but less than the duration of argument, either pro or con on either side, then he is automatically excused from the entirety of the session?

JUSTICE ENGLAND: No, Mr. President, I think that would not be the kind of excuse we are talking about. I would hope an hour, no one would be gone for that long. Obviously there will be occasions when one or more of you have to leave the chamber temporarily. But I would consider that to be a very short period of time to take care of some emergency and then return without necessity for having to advise me otherwise. But for any extended period I would certainly like to know about and then we will consider whether that is in this category or not.

SENATOR BRANTLEY: I had in mind more specifically the situation of one Senator that has already chatted with you and the possibility that he may have to visit a doctor, contemplating perhaps an hour, at the most a couple of hours to visit the doctor; would that then exclude him from further participation?

JUSTICE ENGLAND: I'm going to hold the answer to that. Probably not, but I have asked this Senator and others who have asked similar questions to please try and schedule as much of their absences as possible around recesses, lunch breaks and the break at the end of the day. I think most of those problems that you will have can be accommodated around those breaks.

JUSTICE ENGLAND: Senator Barron?

SENATOR BARRON: On that point, is it the position of the Court that when we're back in the Senate lounge, if we have to step back there for a moment, you can still hear testimony within the chambers.

JUSTICE ENGLAND: That's precisely why I don't consider that to be an excuse. The monitors are on in the back in the areas immediately surrounding the chambers for those kinds of absences. But I would urge you not to congregate back there or to go back there unless absolutely necessary.

There is, as in every trial, a great deal that can be gained by watching the witnesses. It's not enough simply to listen. And that applies for here.

Senators, this proceeding is in legal parlance "at issue" by reason of the respondent having filed a plea of not guilty.

You will find that plea in your Desk Books on page 23. I refer to the most recent Desk Book of September 13.

That means we are prepared at this point to begin taking testimony but for one preliminary matter which I mentioned yesterday.

I mentioned to you yesterday that there is a request by respondent's counsel to put two motions to the Senate which would, if adopted, have the effect of terminating these proceedings before the taking of evidence.

Senator Gallen, quite properly, pointed out to me last night that under the rules, counsel cannot put motions to the Senate, only Senators can. In light of that, and I have advised the counsel for both sides of this, I am going to call your attention to the fact that respondent filed at an earlier date in these proceedings a motion to dismiss Article One of the proceeding. And that motion is in your Desk Book on page 24. That was accompanied by legal memorandum which is not in your Desk Book. If you will look at that, that motion was filed with the Court while you were out of session.

I ruled on that motion by denying it. And the order of denial also appears in your Desk Book beginning on page 46. Particularly, my ruling is incorporated at the bottom of page 46 and the top of page 47.

The gravamen of the objection to Article of the Articles of Impeachment is that the Federal conviction, which is charged in the Articles, is not "final" because it is presently pending on appeal. You will see my ruling denying that objection and refusing to dismiss that Article on pages 46 and 47 of your Desk Book.

I also want to call your attention to the earlier deliberations of May 26 of this body at which limited counsel, Mr. Jacobs, presented to you and argued a motion to dismiss the entire proceedings on several grounds, which motion appears in your earlier Desk Book.

It is counsel for Judge Smith's intention to renew that motion to dismiss the entire proceeding on the grounds there alleged as I understand it. I mention these things in order to give any Senator the opportunity at this point before we begin the proceedings—by the way, I should say that a renewal of that motion is in order. It is a subject that can be reconsidered even though you have once voted to deny that motion.

At this time in the preliminaries of this proceeding and before we begin taking testimony, if any Senator desires a motion to be put which would bring into controversy the two matters which I have just alluded to, that counsel for respondent would like to have brought before you, I will now recognize the Senator for that motion. And I will again advise you as I did yesterday that counsel have agreed should this matter come up, we limit debate for counsel to twenty minutes a side. This is the time, gentlemen, if any Senator cares to make that motion. Senator Poston?

SENATOR POSTON: Mr. Chief Justice, inquiry of the Chair. At the present time has a determination been made by the Supreme Court or by yourself or anyone else as to whether Judge Smith is now still in office or whether he has been removed or whether he was removed automatically when he was indicted or whether he was removed when he was sentenced or whether he is being compensated at the present time or what the status of Judge Smith is?

JUSTICE ENGLAND: Senator Poston, he is not being compensated at this time. He was suspended without pay by order of the Supreme Court quite some time ago, I believe on recom-

mendation of the Judicial Qualifications Commission at an earlier stage in the proceedings.

There is a lawsuit, the only one I know of, affecting the legal questions you are asking about. And I will ask counsel to correct me if I am wrong, it's a suit that was filed in Leon County Circuit Court seeking to declare that the Governor's acceptance of his resignation was not essential. That proceeding terminated with a final judgment by the trial judge saying that an acceptance was necessary. And that is now pending on appeal in our court, the Florida Supreme Court. It is not yet fully at issue in the sense that the record has been brought up and the briefs have been filed.

So an early disposition of that today, tomorrow or the next day or next week is not at all likely. The status of the matter is you have a trial court determination that the Governor must accept the resignation which is now pending on review in our court.

SENATOR POSTON: There is no way that the Senate would ever have any idea even during this procedure as to when that matter will be addressed by the Supreme Court then?

JUSTICE ENGLAND: We will address it, obviously because of its importance, as promptly as possible. But that is very unlikely to result in a disposition during the period of time you are in session, even if you go two, three or four weeks.

For one reason, the record has not even been filed as of yesterday, as I understand it, with our court, which is the triggering point for the activity of counsel. So the matter is not in a posture where the Supreme Court could even hear it could they schedule an argument on it.

SENATOR POSTON: Thank you.

JUSTICE ENGLAND: Senator Dunn?

SENATOR DUNN: Mr. Chief Justice, I would like to move that we, sitting as the Court of Impeachment, ratify and confirm the order entered by you as the presiding officer dated September 11, 1978, disposing of the various motions presented prior to that date.

JUSTICE ENGLAND: Is there any discussion of Senator Dunn's motion?

(No response.)

JUSTICE ENGLAND: Senator Dunn, is the sense of that to allow counsel the opportunity to argue as they have requested the points that respondent's counsel wishes to make?

SENATOR DUNN: Mr. Chief Justice, my purpose in making the motion is to assure that the Senate as a body has the opportunity of, in this case, ratifying and confirming in effect adopting the action taken by the presiding officer when we were not in session dealing with motions addressed to the Court having to do with dismissal of the action and raising various questions about the sufficiency of the pleadings and other matters.

So whether it will be appropriate to hear argument or not is a matter that I frankly would defer to you on. It does seem to me that we ought to have in our record action by the Senate on those motions.

JUSTICE ENGLAND: Senator, I would construe your motion as allowing those arguments to go forward. I would tell you that action is not essential under your Rules, that the Rules specifically provide that in the absence of the Senate overruling or a Senator asking to overrule and it being sustained, the rulings of the presiding officer in the interim are adopted.

SENATOR DUNN: All right, sir. If that be the case, sir, I withdraw the motion with leave of the presiding officer.

SENATOR BRANTLEY: Mr. Chairman, Rule 17 on page 6.

JUSTICE ENGLAND: Thank you. Motion is then withdrawn. Is there any other motion?

(No response.)

JUSTICE ENGLAND: Seeing none, Senators, we are prepared then to go to the matter of presenting this proceeding for your consideration on the merits.

MR. CACCIATORE: Mr. Chief Justice?

JUSTICE ENGLAND: Mr. Cacciatore?

MR. CACCIATORE: May I put an objection on the record, if I may, if that would be proper?

JUSTICE ENGLAND: Would you state the nature of your objection, please?

MR. CACCIATORE: Very briefly, may it please the Court, my objection is simply this. And I understand and recognize the Rules of the Florida Senate. But Mr. Nutter and I are here in the role of defense counsel. And our position is — and I want this to be clear in the record — that by our not being allowed to make motions as such, save and except by some Senator moving us to allow us to do that, that in effect we are being denied our Sixth Amendment rights and the respondent is being denied the effective assistance of counsel. Thank you, sir.

JUSTICE ENGLAND: Mr. Cacciatore, we will note your exception in the record. At this time I want to advise Counsel for both sides, I see Counsel for the Managers is here, that at an earlier date in these proceedings that both sides requested that witnesses who might appear in these proceedings be placed under the Rule as we say in court. What that means, Senators, is simply this, and this is the admonition that I now give to Counsel for both sides.

Any person who has been subpoenaed as a witness in this cause is prohibited from being present in the gallery or within the hearing of the Court of Impeachment at any time during these proceedings. And, Counsel, if any witness is observed in this chamber or in the gallery during that time, I request that you make that fact known to me at once.

Further, witnesses are directed not to discuss these matters among themselves or with anybody else except Counsel in this proceeding.

With that admonition, we move to the first matter in the presentation of this case on the merits which is—excuse me. Senator Dunn.

SENATOR DUNN: Mr. Chief Justice, I would like to ask the Chair for a clarification. Is it my understanding that the ruling of the Chair is that the Respondent cannot make a motion, for example a motion to strike following a sustained objection to testimony?

JUSTICE ENGLAND: No. The rules provide that during the course of the trial motions may be made.

SENATOR DUNN: Can he make any motion, can the Respondent make any motion at this time other than a motion addressing the evidence as it's presented?

JUSTICE ENGLAND: Motions are in order except the two that we discussed which one was to seek overruling of the Chair on preliminary matters which the rules call for a Senator to raise and to renew the motion earlier than the Senate had already passed upon.

SENATOR DUNN: Thank you, sir.

JUSTICE ENGLAND: Senator Barron.

SENATOR BARRON: As an attorney I just have grave reservations about where we are going. I'm afraid that Mr. Cacciatore might well be right to deny the accused the right to be heard through his Counsel. It's close to a constitutional infirmity and I just want to warn everybody that by doing this we might end up doing it again.

In fact, I move he be permitted to make—that the rules be waived and he be permitted to make his motion.

JUSTICE ENGLAND: You have heard Senator Barron's motion. Is there any discussion on that? Senator Gallen.

SENATOR GALLEN: I really think Senator Dunn and Senator Barron have somewhat misunderstood what the Chief Justice had explained this morning.

We adopted rules that if a motion on a legal matter is made and the Chief Justice rules on it, that that ruling stands unless a Senator questions it. And if every time Mr. Cacciatore makes a motion and the Chief Justice rules on it then in order to be fair about it, it's made again and the entire Senate rules on it, we are going to be up here for six months just ruling on questions of law. I have a great deal of confidence, a great deal more confidence in the Chief Justice ruling on these points than I do any other lawyer in the Senate, myself included.

I think unless there is something wrong, we are going to start off on the wrong foot by trying to reconsider all of these legal arguments on it and I think that we ought to go ahead and accept the Chief Justice's rulings. The briefs, the arguments on the law are in the folders, if you want to see them, and I have read them. I read them yesterday. They are available. I think that if there is anything wrong with those rulings, that ought to be brought out. But just to sit here and listen to the argument on it is the wrong course of action for us to take.

JUSTICE ENGLAND: Senator Barron.

SENATOR BARRON: Will Senator Gallen yield?

SENATOR GALLEN: Certainly.

SENATOR BARRON: Senator, my concern is the legality of what we are doing.

Yesterday we concluded that only the Senate can make a decision as to whether or not to continue the case. We heard testimony all yesterday afternoon, and I think properly so, for the Senate not to decide a much more important matter of the motion to dismiss but it bothers me as an attorney where we are going.

SENATOR GALLEN: Senator, let me respond to that. I think there is a clear distinction. Yesterday we were sitting as triers of the fact and we were listening to witnesses and we were making a decision on a factual question after hearing medical experts just like a jury does. But the question that is raised here goes to the legal sufficiency of the information and that's a legal matter. And there are only about nine lawyers in here to begin with and I don't think any of them, myself included, have researched these points that well.

We're not sitting here as legal jurists, that's why we have the Chief Justice in this type of proceeding. And I think it's just going to waste a lot of time to have all of these legal arguments reargued to this body.

Now the factual questions are much different and that's what we decided yesterday.

JUSTICE ENGLAND: Senator Hair.

SENATOR HAIR: Mr. Chief Justice, I tend to agree with Senator Gallen. However, I think one of the things that we try to do in this impeachment proceeding is to provide due process of law and I certainly would hate—I think up to this point there is no question that due process of law has been provided. And on that basis because there is a chance, in my opinion, that there could be a question raised, I feel that even though I would rather not hear the arguments that perhaps in order to clear up any technicalities, that we ought to allow, since it's already been indicated by you, that each side be limited to 20 minutes. That will permit them to present their arguments.

Again, I agree with Senator Gallen that we don't need to do this. We have heard these arguments. We spent a long time listening to them back during the regular session. But I think in an abundance of fairness and caution and due process requirements that perhaps we should go ahead and hear these arguments and again take a ruling, let the Senate rule on this motion before we proceed.

JUSTICE ENGLAND: May I take that as a second to Senator Barron's motion?

SENATOR HAIR: A second is not required. I do concur with Senator Barron.

JUSTICE ENGLAND: Any further discussion on the motion? Senator McClain.

SENATOR McCLAIN: I would like to have it clarified. It's my understanding then what we are going to decide is whether the Respondent or perhaps the Managers can make motions on their own initiative relative to any matters—made to the sufficiency of the evidence to sustain the charge or charges in the Articles of Impeachment or any other matters which may be addressed to you; is that correct?

JUSTICE ENGLAND: I think I can clarify that. The reason we are in this procedural difficulty is that we have two different kinds of motion: Those which were made while the Senate was not in session and I was the presiding officer and those which will be made from this point forward in these proceedings. I don't think there will be any difficulty with the ones from this point forward upon any motion being made by either Counsel. This will be like a normal trial. I will be called upon to rule. At that point any Senator can call a question on my ruling simply by asking and then the body will vote to overrule or sustain. But this is the only time I think we will have this procedural difficulty because the absence of a Senate to confirm or reject my action during the time that it's made.

Let's have the Secretary unlock the machine and call for a vote on the question of the motion of Senator Barron that we review the ruling of the presiding officer with regard to the motion to dismiss; is that your motion, Senator Barron? If you will restate it, please.

SENATOR BARRON: Judge, I would rather restate. I don't want to appear in disagreement with the Court. I just want the opportunity for people to be heard and my motion, the sense of my motion, is, can be said another way, that the Senate confirm the acts of the Court and permit Counsel to be heard on their argument and they can vote any way they want to. I just don't want to deny anyone the right to be heard by Counsel.

That is the motion. The sense of the motion is that we can make it either way that we want to. He can be permitted to make his motion or that we confirm the Court and I move that we confirm the actions of the Court and permit Counsel to be heard on the argument on my motion.

JUSTICE ENGLAND: All right. I think all Senators understand the motion. The motion is that the Senate confirm the action of the presiding officer and reaffirm the action of the Senate on May the 26th, the effect of which will be to give Counsel 20 minutes a side to argue to you those matters.

All in favor of the motion please record your vote. Have all Senators voted? All those against also record, I'm sorry.

Have all Senators voted? The Secretary will lock the machine and announce the vote.

The vote was:

Yeas—27

Barron	Gorman	McClain	Thomas, Pat
Brantley	Graham	Poston	Tobiassen
Chamberlin	Hair	Renick	Trask
Childers, W. D.	Henderson	Scarborough	Ware
Dunn	Holloway	Scott	Williamson
Firestone	Lewis	Skinner	Wilson
Glisson	MacKay	Thomas, Jon	

Nays—9

Childers, Don	Johnston	Peterson	Spicola
Gallen	Myers	Plante	Vogt
Gordon			

MR. SECRETARY: 27 yeas, 9 nays.

JUSTICE ENGLAND: The recording of the vote. We will now have argument by Mr. Cacciatore followed by argument by the Managers, 20 minutes per side, addressed to the dismissal of these proceedings.

Mr. Cacciatore.

(Short pause.)

JUSTICE ENGLAND: Just one second. Senator Plante.

SENATOR PLANTE: I think we've had some parliamentary maneuvering. Now we've just agreed to support your ruling but give the right of Counsel to testify. Now if Counsel sways our vote, are we going to then move to reconsider by vote by which we ruled in favor of doing?

JUSTICE ENGLAND: I think the motion was recast, Senator Plante, to perhaps confirm the action of the Senate of May 26th or to hear argument on the motion to review my ruling. It will not be necessary to reconsider it. It will simply be—at the conclusion of the discussion a motion, a vote on whether the Senate will dismiss the proceedings.

SENATOR PLANTE: Mr. Chief Justice, I would like the motion read back to us because I understood the motion of Senator Barron to say that we concur in the ruling of the Chief Justice and also stood by our original vote back in May on the other argument but yet we are going to allow Counsel to argue on the motion that you have already ruled even though we agreed to it.

JUSTICE ENGLAND: We will ask Senator Barron to clarify that.

SENATOR BARRON: The intent of the motion was to get this matter before the Senate and at the conclusion of the argument we should take a final vote on whether or not to agree with the order of the Court.

I think we should vote at the conclusion of the argument on the merits. What I was trying to do was get the matter before the Senate for Counsel to be heard.

I'm going to make another motion at the conclusion of the arguments.

My motion is to confirm it subject to hearing him on the motion but I think that they ought to just go ahead and be heard.

JUSTICE ENGLAND: It will take another motion at the end.

SENATOR BARRON: Senator Plante and I and Senator Dunn and Senator Hair can get together and get it fixed so that it will be right in the record.

JUSTICE ENGLAND: It will take another motion at the end but right now all we have done is allow Counsel to proceed; is that what your concern was?

SENATOR PLANTE: No, Mr. Chief Justice, I don't think it's going to take any motion unless we want to overrule you. I would like the motion read to be sure that we all understood what the majority of this body just voted on.

JUSTICE ENGLAND: Senator Barron just clarified, as I understand, his original motion to require another motion following the argument that either confirms the interim ruling of the presiding officer and reaffirms the original ruling of the Court or rejects it. How that motion will be cast will be worked out in the next 40 minutes as we listen to argument.

Mr. Cacciatore, you may proceed.

MR. CACCIATORE: Mr. Chief Justice, the members of the Senate, I do appreciate very much having the opportunity to speak to you briefly about these matters.

I am familiar with the length of the argument that was before you on May 26th, 1978 and I'm hopeful that I will not be revisiting too many of those matters.

The first point that I wish to speak to is that the Senate, as I understand it, on May 26th, 1978 by its vote ruled that Sam Smith had not been removed from office, was still in office even though he had been found guilty by a jury in a Federal proceeding in Jacksonville. And even though a United States District Judge convicted him of that offense.

Article I of the Articles of Impeachment, the basis of that Article, although the Board of Managers uses language to the effect that Sam Smith has been guilty of a misdemeanor in office, they give for a reason for that basis that he has been convicted. So I'm simply saying to you, gentlemen, is that you found on May—I apologize, Senator Wilson, excuse me—if you found on May 26th that he was not convicted going toward the issue of jurisdiction, it seems very inconsistent to find for this purpose of going forward factually that in fact he has been convicted. And this is the reason I filed the motion to dismiss Article I with the Chief Justice. I just simply would point out to the Senate, I think it's very inconsistent to say, well, on the issue of jurisdiction no, he hasn't been convicted but on the issue of fact, Sam Smith has. And I just feel that's a very inconsistent position.

Moving to the matters that were brought to your attention back in May by Attorney Joseph Jacobs, I'm just concerned that we are engaged in a process, I say "we"—excuse me again—the Senate is engaged in a process that's really not going to accomplish anything. It's hard, it's difficult for me to conceive, for me to believe that anyone in this chamber really believes that this man has not been removed from office.

Back in May when he was here before you personally he was convicted. Now he is twice convicted. He has received a sentence of 12 years.

Now what are we going to accomplish by these proceedings? I have been told that one of the reasons that we are here is because of the matter of the pension. Again, if you will go

back in time to May 26th, 1978 I point out to you that on Page 33 Mr. Rish conceded that the possibility existed that the matter of the pension may not be resolved in this chamber. And I would suggest to you, in my humble opinion, that matter will not be resolved.

So why are we here? If the man is out of office, the man has been convicted, he is never going to be a public official again in this State, in this country, anywhere on this earth. The publicity that has followed him since his problems began will prevent him from holding any office of public trust.

Now if this were a proceeding where it was the feeling of the Senate that we are going to have—we are going to convict this man, we are going to go through with this proceeding to punish him, I think that might be a laudatory purpose. But, members of the Senate, how can you punish someone who has been sentenced to 12 years in prison?

The only thing that this body could do, I know this may sound facetious, but I'm using this to hopefully make a point; the only thing this Senate could do right now to Sam Smith to hurt him would be to adjourn these proceedings, somewhere outside on the lawn where there is an oak tree, throw a rope over a limb, haul him up by his neck until he is dead. That's the only way you can possibly hurt this man. I implore of you to consider that.

The Governor for whatever reason he had and, again, I'm unfamiliar with politics, I don't understand it, I'm just a trial lawyer. The Governor for some reason decided not to accept this resignation whereas in the past he has.

One of the things I think the Senate should consider is what precedent is going to be set here in these proceedings. And I would suggest to you that by going forward on this set of facts and convicting Sam Smith is going to be opening the floodgates for future Governors, for grand juries, for the press to visit upon the House and the Senate these type of matters each time there is some rumble, some insinuation about a public official being involved in some wrongdoing. And I think that that's going to be the result of your convicting Sam Smith.

Again, the matter of the pension is not going to be resolved here. The matter of the pension is going to be resolved at another time, in another forum. One or two other points, briefly.

If someone could suggest to me that we are going through this proceeding because of the deterrent effect this impeachment proceeding might have on public officials down the road sometime in the future, I could also accept that. I could also agree with that. That would be a very laudatory purpose. But, again, this man has received a sentence of 12 years. Certainly if a sentence of 12 years is not a deterrent to public officials in the future, how can this proceeding?

We're going through this proceeding as I understand and read the Constitution. You are removing him from office and he will not be able to hold office again. That's all you are accomplishing. You're opening the door to future governors to put you back in this situation, to put the House and the Senate, back in this situation. Every year you could get involved in an impeachment proceeding.

And I would respectfully suggest to you that I think there are other matters of greater importance that both Houses could handle rather than get bogged down in something like this when in reality, when the bottom line is drawn under the figures, we're not really accomplishing anything. Thank you.

JUSTICE ENGLAND: The Chair recognizes Mr. Rish for the Board of Managers.

REPRESENTATIVE RISH: Thank you, Mr. Chief Justice and members of the Court. We have plowed up this field and planted it about two or three times already and I hope that we can do our final sowing this morning and get on with the planting and working our crop.

Let me tell you, though, about two points that we need to touch here very briefly. One is, what is the status of a conviction under Florida Jurisprudence. Let me tell you what that is. And I expect most of you already know because you recall that we had the same argument here once before with Mr. Joe Jacobs. The law is clearly established in the state of Florida that when a man goes to trial he goes with a presumption of innocence.

The law is equally clear in the State of Florida that once a man has been convicted by a jury of his peers and the Court has entered an order finally adjudicating that guilt or that innocence, that that presumption of innocence then disappears, that the man is found guilty. Now where do we go from there?

After we lose that presumption of innocence as Sam Smith did in Jacksonville and as Sam Smith has done in New Orleans, then we find a naked conviction of guilt on appeal where all that's happened is that the presumption has changed from the state or the government to the defendant.

Now this hangs in limbo as long as these cases are on appeal. And let me tell you that both of them are on appeal and one of them or both of them or neither of them may be overturned. We don't know until the Court gets through looking at the records.

But if you will read our article you will find that what we based Article I on was the fact that at this point the man had been found guilty by the trial court after a jury of his peers had found him guilty. And that was what the order was entered upon. If you will read the Chief Justice's Order of Denial, you will find that it's a very well reasoned order setting forth basically what the law is. I don't think anybody quibbles with us on what the case law is with regard to presumption of innocence.

We have mentioned before the cases in the United States Senate of Senator Blount and Secretary of War Belknap where in those instances, one instance the President accepted the letter of resignation and there was no question that that man was through with office forever. But the Senate found that it could go ahead and it did go ahead.

Let me read just one short quote from the order which was entered on the pre-trial motions by the Chief Justice when he was quoting from *Forbes vs. Earl*. "The House of Representatives is clothed with the sole power to impeach. And all impeachments are to be tried by the Senate. Since the House of Representatives is clothed with the sole power of impeachment of an official, it necessarily follows that it has the power to determine whether the charges brought against him amount to a misdemeanor in office as contemplated by our Constitution. And misdemeanor in office means many things, the final definition of which is found in your conscience."

I would submit to you that what we have done before is imminently correct and let's not make a mistake by reversing ourselves this morning. Thank you very much.

JUSTICE ENGLAND: At this time it would be in order for a motion. Senator Barron?

SENATOR BARRON: Yes, Mr. Chief Justice, I move that the Senate do confirm the previous action of the Chief Justice in denying the motion to dismiss the proceedings. A moment to explain it?

JUSTICE ENGLAND: Senator Barron.

SENATOR BARRON: Senators, I have a matter of interest. Senator Plante is playing his parliamentary tricks but I want to tell you I don't know of anything that's more difficult than to vote on this motion.

I know what the vote is going to do because we're part political and part jury and part prosecutors and whatever we are here. I want to say that I strongly, personally, deeply disagree with the Governor that I found so much agreement with at the conclusion of the last session after eight years in not accepting this man's resignation.

I know the mood of the people of the country. And we are all going to know about it pretty soon relative to the tax revolt that's sweeping the country. And it's certainly foolhardy for us to stay here and spend half a million dollars or a quarter of a million dollars passing not upon whether he is in office. The only reason, real reason for impeachment in the Constitution is to get somebody out of office that's done something wrong and is still in office doing something wrong.

To assume that—You know, I had planned to make a funny speech about this but it's not funny. I had planned to ask Mr. Rish if he really thought that with the lack of popularity if we failed to impeach Sam Smith, there would be a great draft in the country and two years from now he would be President of the United States. How ridiculous that is.

I had planned to ask Senator Lewis in the unfortunate event that the Pope, the new Pope, should die that Smith might change his religious affiliations, whatever they are, and be Pope. That's about how ridiculous it is that we're here wasting the taxpayers' money.

I hope, in the words of Dr. Wilson yesterday, that the press does not again misunderstand what I am saying. I am not passing on the man's guilt or innocence. I'm not here and will I never be here condoning misconduct in office. But that's not before us.

I don't know why we are here. I think the House of Representatives shows a great deal of bad judgment in voting Articles of Impeachment. But in any event, we are here and we're the Senate and the grand jury has voted the indictment. It now appears that we must do this silly, futile thing.

And for that reason I am going to vote to confirm the ruling of the Court and sit here with you and hear the testimony with an open mind, although I think we need not do it.

JUSTICE ENGLAND: Further discussion?

(No response.)

JUSTICE ENGLAND: Call for the vote at this time on Senator Barron's motion to confirm the action of the presiding officer. All in favor of the motion will signal a yea, green light, and those opposed, contrary sign. Have all Senators voted?

(No response.)

JUSTICE ENGLAND: The Secretary will lock the machine and announce the vote.

Yeas—31

Barron	Graham	Myers	Thomas, Jon
Brantley	Hair	Peterson	Thomas, Pat
Childers, Don	Henderson	Plante	Tobiassen
Childers, W. D.	Holloway	Poston	Trask
Dunn	Johnston	Renick	Vogt
Glisson	Lewis	Scott	Ware
Gordon	MacKay	Skiner	Wilson
Gorman	McClain	Spicola	

Nays—3

Chamberlin	Scarborough	Williamson
------------	-------------	------------

THE SECRETARY: 31 yeas, 3 nays.

JUSTICE ENGLAND: By your vote you have confirmed the action of the presiding officer prior to your convening. At this time under the rules, it would be appropriate for opening statements by counsel. Rule 22 specifically provides that the Board of Managers shall have the right to open this proceeding, not more than one hour for their opening statement, not more than one person to make that statement. Is the Board of Managers ready?

MR. GLICK: Yes, we are.

JUSTICE ENGLAND: Senator Hair?

SENATOR HAIR: Mr. Chief Justice, a parliamentary matter. Do we need to re-read the Articles of Impeachment or do we need a motion to waive the reading of those? I know that they have been read once before but in order to clear that up, perhaps, unless—I would move that we now waive the reading of the Articles of Impeachment.

JUSTICE ENGLAND: That motion is in order, Senator. The Articles are in your Desk Book, the first and the second Desk Book. Any discussion on the motion to waive the reading of the Articles of Impeachment?

(No response.)

JUSTICE ENGLAND: We can do this by voice vote. All in favor of the motion to waive the reading signal by saying aye.

THE SENATE: Aye.

JUSTICE ENGLAND: All opposed?

(No response.)

JUSTICE ENGLAND: The motion is carried.

Counsel for the Managers for an opening statement.

MR. GLICK: Your honor, if it please the Court, my name is Marc H. Glick. I am counsel to the Board of Managers on the part of the Florida House of Representatives. The Board of Managers is charged with prosecuting the five Articles of Impeachment unanimously voted against Third Judicial Circuit Court Judge Samuel S. Smith on April 12, 1978.

At the outset I would like to share the thoughts of the late Chief Justice Glenn Terrell on the nature of a Circuit Judge.

"A Circuit Judge is one of the most important men in our scheme of democratic society. In his hands rest the welfare, property, life, chattels and maybe the happiness of everyone who appears before him in a litigated cause. The future of one's family may be wrapped up in said cause and the nature of the Judge's ruling may affect unborn generations. Aside from this there is involved in every such cause elements that set and determine the moral and social standards and the well-being of the community. A Circuit Judge should be one whose moral and professional habits are solid and dependable, whose feet are on the ground, who can be depended upon to be on the right side of every moral issue, and whose personal life is such that any mother can commend it to her child."

When doubt enters, confidence departs. When confidence in the man who sits on the Bench is gone, confidence in the court system is gone.

So it is with Judge Samuel S. Smith. So it was that the Florida House of Representatives preferred five Articles of Impeachment charging Samuel S. Smith with misdemeanor in office.

What is a misdemeanor in office? Article III, Section 17 of the Constitution says that a Circuit Judge may be impeached for misdemeanor in office.

Let me read to you a definition that was used in the 1957 impeachment of Judge Holt and in the 1963 impeachment of Judge Kelly:

"A misdemeanor in office as grounds for impeachment has much broader coverage than the common law misdemeanor as usually defined and applied in criminal procedures. As applied in impeachment, misdemeanor in office may include any act involving moral turpitude which is contrary to justice, honesty, and principles of good morals.

The writers generally hold that while the offense must be committed during the incumbency in office, it need not be committed under the cover of office."

The Senate sitting as a Court of Impeachment is vested under our Constitution and court precedents with absolute power in the proceedings. You constitute a court of exclusive, unique and final jurisdiction. You are both judges and jurors. The degree of proof required to support a conviction by this Court is that which is necessary to move the conscience of two-thirds of the Senators present.

The Board of Managers on the part of the Florida House of Representatives intends to prove that Samuel S. Smith is guilty of misdemeanor in office and should be convicted on the Articles of Impeachment that are before you, removed from office and disqualified from holding any office of honor or trust or profit as provided in the Constitution of Florida.

The Managers have stipulated to restrict their evidence to the facts and the matters that were presented in the case of the *United States of America vs. Samuel S. Smith*, that was tried in Jacksonville, Florida in April, 1977. That trial resulted in Judge Smith being convicted of the crime of conspiracy to unlawfully obtain and distribute marijuana.

The Managers will show from the evidence adduced in that trial that Judge Smith premeditatedly and with predisposition set into motion and controlled a many-faceted conspiracy which involved himself, Grover Lamar "Possum" Lee, who was an investigator for the Public Defender's office in that circuit; Homer F. Ratliff, who was a bondsman in that circuit; Richard Bradley, and Charles Fulton Ethridge.

It will be shown that Judge Smith sought to involve Suwannee County Sheriff Robert Leonard, Chief Assistant State Attorney of the Third Judicial Circuit Virlyn Willis, and former Suwannee County Sheriff Duke McCallister. These men would have no part in Smith's scheme and went immediately to the appropriate law enforcement officials and agencies, bringing to light this conspiracy and permitting the prosecution of Judge Smith.

The law of conspiracy is very important here, for under the law of Florida Judge Smith is chargeable with the acts and pronouncements of his co-conspirators just as if they were his own.

The premeditation or predisposition of Judge Smith is also of great importance. Judge Smith's creation of and active participation in the scheme to obtain marijuana is evidence of premeditation and his predisposition.

The Managers expect to show you the course of Judge Smith's conduct which constitutes misdemeanor in office.

Sometime in July of 1976, around the end of the month on a Sunday, Public Defender Investigator Poss Lee initiated a conversation with Sheriff Robert Leonard to the effect that Sheriff Leonard might need some campaign funds in his forthcoming campaign and that Judge Smith could help get Sheriff Leonard some of these funds if Sheriff Leonard would release the marijuana in his evidence vault to Judge Smith.

Immediately after Lee's contact with Sheriff Leonard, Leonard went directly to FBI agent Gary Ramsey to report the scheme and arrange to keep Ramsey posted of every event that followed.

On Friday, August 6, 1976, Judge Smith, in the company of Poss Lee visited Sheriff Leonard in Sheriff Leonard's office and initiated a discussion with respect, once again, to obtaining marijuana. We're not talking here about tobacco. We're talking about marijuana, a controlled substance under the laws of this state and under the laws of the federal government.

At this time Judge Smith offered to produce a destruction order, an order of the Court, to cover the illicit removal of marijuana from Sheriff Leonard's evidence vault.

Approximately one week later, Sheriff Leonard ran into Judge Smith in the courthouse. And Judge Smith again inquired if Sheriff Leonard had considered the scheme.

Towards the end of the month of August, after already having conferred with the federal authorities, Sheriff Leonard went to the state authorities. He went to the Florida Bureau of Criminal Law Enforcement and he went to the State Attorney, Arthur Lawrence, and he reported Judge Smith's contact.

Early in September, around September 3rd, 1976, 5000 pounds of marijuana was seized at the agricultural inspection station on Interstate 10 in Suwannee County. This load being too large for Sheriff Leonard's evidence vault, was taken immediately to the Florida Department of Criminal Law Enforcement in Tallahassee and it was destroyed.

On September 7, 1976, just to give you a context of the chronology, Sheriff Leonard, running as an incumbent in a four man race was re-elected without a runoff.

On September 8, Judge Smith called Bondsman Homer Ratliff into his Chambers and told Ratliff that he had access to some marijuana and he wanted to know if Ratliff knew anyone who could handle it for Smith. On that day Ratliff told Bradley about Smith's contact.

On September 9th, Sheriff Leonard and Judge Smith conversed by phone relative to the proposed marijuana deal and a meeting was set up for the following day at Judge Smith's home.

On the next day Sheriff Leonard, wired with a transmitter, having a tape recorder taped to his person, met with Judge Smith in the driveway of Judge Smith's home and once again Smith advanced the marijuana scheme. And further, Smith again assured that a destruction order would be provided to cover the absence of the marijuana. Smith went on to say that for 500 pounds of marijuana, \$150,000 could be gotten.

On September 15th, 1976, not having heard from Sheriff Leonard, Judge Smith and Poss Lee contacted former Suwannee County Sheriff Duke McCallister and asked him to intervene with Sheriff Leonard in order to get him to participate in the marijuana deal.

On that night, independent of Lee and Smith contacting McCallister, Lee visited Sheriff Leonard behind the Suwannee County Jail, offered him a destruction order to cover the absence of the marijuana in Sheriff Leonard's evidence vault but Sheriff Leonard refused.

On Thursday, September 16, 1976, obviously not having heard from Lee, Smith called Chief Assistant State Attorney Virlyn Willis into his office and offered him a share in the proceeds from the sale of the illicit marijuana and in exchange

for covering the back door, for insuring that there would be no prosecution.

On Friday, September 17, Smith called Willis and told him of Leonard's refusal.

On September 20, albeit four days later, Assistant State Attorney Willis informed his office, Arthur Lawrence, of Smith's contact.

On Monday, Tuesday and Wednesday, September 20, 21 and 22, a locked rental truck containing marijuana which Sheriff Leonard had seized, and put out the word on, was placed in the parking lot behind the Suwannee County Jail. It was not disturbed.

During the month of October, 1976, things were quiet but in November, Sheriff Leonard, working with the Federal Bureau of Investigation, took possession of 1500 pounds of marijuana. That was on November 15.

On November 16, Sheriff Leonard contacted Judge Smith by phone to tell him he had reconsidered. As a result, Smith and Leonard met that afternoon in Leonard's office.

During the meeting Judge Smith arranged with Sheriff Leonard to obtain in excess of approximately 1500 pounds of marijuana. The plans were set to place the marijuana in the back of a padlocked U-Haul truck and deliver it to the Suwannee County landfill. When Sheriff Leonard delivered the truck to the landfill as per his arrangement with Judge Smith, the key to the padlock on the back of the truck was to be placed under the mat on the driver's side of the truck. Later on — and I would like to add that that conversation in Sheriff Leonard's office that day was recorded. Later on that afternoon, on Tuesday, November 16th, Judge Smith again called Homer Ratliff and arranged a meeting. At that meeting Smith instructed Ratliff to get some help and a vehicle and to pick up some marijuana that night between 10:00 and 11:00 o'clock at the Live Oak landfill. Judge Smith told Ratliff that the key to the padlock on the back of the truck would be under the mat on the driver's side of the truck.

As arranged with Judge Smith and in cooperation with the Federal Bureau of Investigation, Sheriff Leonard drove the U-Haul truck containing the 1500 pounds of marijuana to the landfill and put the key to the padlock under the mat on the driver's side. He then left the area. Later that night when Sheriff Leonard returned to the landfill, the marijuana was gone from the back of the truck as arranged.

On November 17th, 1976, Richard Bradley was apprehended in Ethridge's truck. On Thursday, November 18, 1976, Judge Smith was arrested in his Chambers. On Friday, January 14, 1977, Judge Smith was indicted. On Friday, April 29, 1977, Judge Smith was convicted by a jury of his peers. On Tuesday, June 3rd, 1977, Judge Smith was sentenced to three years incarceration. His case is now on appeal.

Such is the chronology of events in the case against Judge Smith.

The Board of Managers on the Part of the Florida House of Representatives contends that Judge Smith's conviction of a felony as represented by his adjudication of guilt by a jury of his peers and loss of his presumption of innocence constitutes misdemeanor in office.

The Managers contend that Judge Smith conspired to unlawfully obtain and distribute in excess of approximately 1500 pounds of marijuana by attempting to get marijuana from the evidence vault of a sheriff in his circuit, and involving a bonds-

man and public defender investigator in his circuit. The Managers contend that this constitutes misdemeanor in office.

The Managers contend that the attempted bribery of Sheriff Robert Leonard and Chief Assistant State Attorney Virlyn Willis as officers of the State of Florida to influence the performance of their official duties constitutes misdemeanor in office.

The Managers further contend that Judge Smith's offering of a destruction order to cover the illicit removal of marijuana and attempting to obstruct the investigation into his activities, comprises subversion of the judicial process and constitutes misdemeanor in office.

Finally, the Managers contend that Judge Smith's actions indicate a course of conduct that is unbecoming a judicial officer of the State of Florida and has resulted in the lowering of the esteem of the judiciary of the State of Florida and that said conduct constitutes misdemeanor in office.

The Managers submit, on the basis of the evidence we will present and in light of the course of conduct outlined above, that Judge Samuel S. Smith of the Third Judicial Circuit of Florida is guilty of misdemeanor in office and should be removed from office and, further, disqualified from holding any office of honor, trust or profit.

Much will be said about pensions and the Governor's position. Because of these points, you may ask why we pursued this long, possibly arduous procedure. We pursue it because it is our duty. We pursue it because it is in the interest of the people of the State of Florida to see that offending public official's misdeeds do not go unprosecuted. We pursue it as a deterrent to those public officials who regard the interest of the public lightly. We pursue it because the public interest would not be vindicated by the mere forfeiture of position upon acceptance of resignation.

The mortar between the bricks in the wall of the public's confidence in government is eroding. Our failure to address the people's interest will facilitate its crumbling and force the collapse of our system of government.

I would like to leave you with a quote from Shakespeare's *Measure for Measure*, Act II, Scene II.

"Thieves for the robbery have authority, when judges steal themselves."

Thank you.

JUSTICE ENGLAND: Thank you, Mr. Glick. Under Rule 22, the impeached officer may at this time either make or reserve his opening statement. Mr. Cacciatore.

MR. CACCIATORE: Your Honor, the Respondent will reserve his opening statement.

JUSTICE ENGLAND: All right. In that case the House Managers will call their first witness.

(Short pause.)

MR. CACCIATORE: Your Honor, we would like to move for a 10-minute recess, if we may.

REPRESENTATIVE RISH: We have no objection.

JUSTICE ENGLAND: There has been a request for a 10-minute recess. This seems a very good time. The Senate will reconvene at 10:30.

The Senate recessed at 10:15 a. m. and was called to order at 10:30 a. m.

JUSTICE ENGLAND: The Senate will please come to order. All the Senators please indicate their presence.

A quorum present—36:

Barron	Gordon	McClain	Spicola
Brantley	Gorman	Myers	Thomas, Jon
Chamberlin	Graham	Peterson	Thomas, Pat
Childers, Don	Hair	Plante	Tobiassen
Childers, W. D.	Henderson	Poston	Trask
Dunn	Holloway	Renick	Vogt
Firestone	Johnston	Scarborough	Ware
Gallen	Lewis	Scott	Williamson
Glisson	MacKay	Skinner	Wilson

MR. SECRETARY: A quorum is present, Mr. Chief Justice.

JUSTICE ENGLAND: At this time the House Managers will begin the presentation of their case.

REPRESENTATIVE RISH: We appreciate the short break very much. I am happy to advise you that we have probably cut about two or three days off of our trial with the 10 minutes, Judge, that we just had. I know that's going to disappoint some of the Senators.

JUSTICE ENGLAND: Mr. Rish, if you want any more breaks, just ask the Chair.

(Laughter.)

REPRESENTATIVE RISH: Thank you very much. If you will now accept for Introduction Managers' Exhibits 2, 3 and 4 which I will briefly go through. I believe they are certified copies and I think Mr. Cacciatore is satisfied and I believe there has been a stipulation, first of all, Mr. Cacciatore, to the indictment of Judge Smith; any problems? There are two indictments of Judge Smith here.

MR. CACCIATORE: Your Honor, we have discussed this and we have no objection—

JUSTICE ENGLAND: Please step to the microphone.

MR. CACCIATORE: Your Honor, we have reviewed these materials previously with the Board of Managers and we have no objection to the certified copies. We have reviewed the copies and are confident that these are exact copies and I see no need for the originals to be introduced in this procedure.

JUSTICE ENGLAND: We appreciate the stipulation on those matters.

REPRESENTATIVE RISH: We can just identify them. The first is the two indictments of Judge Sam Smith, the two jury verdicts of guilty on the indictments which we have just had. This is the judgment and order entered by the Court pursuant to the conviction. Thank you very much.

JUSTICE ENGLAND: Without objection those will be entered. Please give them to the Secretary of the Senate.

REPRESENTATIVE RISH: Mr. Chief Justice, I would like to move you, sir, that the Rule of Entrance of the Chambers be waived and that Mr. Barry L. Zisser, Honorable Barry Zisser, an attorney at law, be allowed to accompany his client, Mr. Homer Ratliff, to the stand to advise him if Mr. Ratliff should seek any advice from his attorney during the course of the questions.

JUSTICE ENGLAND: Without objection.

MR. CACCIATORE: Mr. Justice, I have information that I have received that I think it would be appropriate for the

Court to consider the matter of whether Mr. Ratliff will or will not testify outside the hearing of the jury. I know of no other way to state it other than what I have said. I think by the Board of Managers being able to present this witness without some matters being resolved that the Respondent would be prejudiced unless the Court saw fit. This is a matter dealing with a legal issue and I am reluctant to say any more than that because were I to do so the matter that I would complain about, I would be guilty of that myself.

JUSTICE ENGLAND: Do I understand from the Board of Managers that the first witness they're going to call, the first witness is going to be Mr. Homer Ratliff?

REPRESENTATIVE RISH: Yes, sir.

JUSTICE ENGLAND: Considering Counsel's objection, the desire of the Managers to hear this witness at this time, first in their presentation, I think it will be necessary for the Court to declare an informal recess of the Senate for the purpose of resolving a legal point. I will ask the Senate to please stand in informal recess on the call of the Chair until I can get back and give you the resolution. Thank you.

The Senate recessed at 10:44 a. m. and was called to order at 11:15 a.m.

JUSTICE ENGLAND: The hearing will resume. Will all the Senators please indicate their presence?

A quorum present—36:

Barron	Gordon	McClain	Spicola
Brantley	Gorman	Myers	Thomas, Jon
Chamberlin	Graham	Peterson	Thomas, Pat
Childers, Don	Hair	Plante	Tobiassen
Childers, W. D.	Henderson	Poston	Trask
Dunn	Holloway	Renick	Vogt
Firestone	Johnston	Scarborough	Ware
Gallen	Lewis	Scott	Williamson
Glisson	MacKay	Skinner	Wilson

MR. SECRETARY: A quorum is present, Mr. Chief Justice.

JUSTICE ENGLAND: Senators, I apologize for that delay. I think the discussion which I had with Counsel, the need for it will be apparent in just a few moments. At that time I will explain to you exactly what occurred, what rulings were made and what is necessary for you as a Senate.

At this point it's appropriate for Mr. Rish to call his first witness, Mr. Homer Ratliff, as I understand it.

REPRESENTATIVE RISH: Mr. Chief Justice, we also need a chair, I believe, we have previously without objection moved that Mr. Barry Zisser, his attorney, could accompany him so he might advise him if he needs advice.

JUSTICE ENGLAND: The witness will please take the stand.

WHEREUPON,

HOMER RATLIFF

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY REPRESENTATIVE RISH:

Q. Would you please state your name?

A. Homer Franklin Ratliff.

Q. Mr. Ratliff, where do you live?

A. Lake City, Florida.

Q. How long have you lived there?

A. Three years.

Q. Where were you born?

A. Suwannee County, Live Oak, Florida.

Q. You say you have been in Lake City since '73 or '4, for three years?

A. Yes, sir.

Q. Was there any particular reason why you moved?

A. Well, I was in the bail bond business since July the 13th, 1971. Lake City was the center of my location and then my wife had—we got a divorce and I moved to Lake City.

Q. Now prior to '73 you lived in Live Oak; is that correct?

A. Yes, sir.

Q. What did you do while you were in Live Oak? Were you in business or you worked for somebody or what?

A. I was in the bail bond business and grocery business.

Q. How long have you been in the bail bond business?

A. July the 13th, 1971.

Q. Would you tell us very briefly what the bail bond business entails?

A. Write appearance bonds for the courts and I write a bond, I guarantee the man's appearance in court.

Q. All right, sir. Do you know Judge Samuel Smith?

A. Yes, sir.

Q. Do you know a man named Richard Eugene Bradley?

A. Yes, sir.

Q. Do you know a man named Grover Lamar Lee sometimes known as Possum or Poss Lee?

A. Yes, sir.

Q. Do you know a man named Charles Fulton Ethridge?

A. Yes, sir.

Q. When you moved to Lake City in 1973 did you have occasion to have any business in and about the court where Sam Smith was a judge?

A. Yes, sir.

Q. Between '73 and '76 approximately how much business did you do with the court that was presided over by Judge Sam Smith?

A. Probably 65, 70, 75 percent of the business.

Q. All right, sir. Was that primarily returnable in Columbia County or where?

A. Yes, sir, in Columbia County.

Q. Would you say 60, 70, 75 percent of the business that you wrote in Columbia County Judge Smith was involved in?

A. Yes, sir.

Q. Then you were a heavy bondsman for that court; is that correct?

A. Yes, sir.

Q. What was Judge Smith's relation to you as a bondsman or what was his role in setting the bonds?

A. Nothing other than he was a judge normally in Circuit Court for the cases.

Q. What happened if somebody didn't show up at the trial that was scheduled or had an appearance scheduled, what would he do then?

A. The State would call the case and if the person didn't show he would bust the bond.

Q. Who would have to pay that bond?

A. I did.

Q. You did?

A. Yes, sir.

Q. How well do you know Judge Smith?

A. I don't, sir, just casually.

Q. Do you remember when you first met him?

A. Yes, sir.

Q. Where was it?

A. It was September the 8th, 1976 in his chambers.

Q. Is that the first occasion that you ever had to see him or speak to him or talk to him? What I mean is, when did you first become acquainted with Judge Smith?

A. No, sir, in the courts.

Q. Oh, I see. And sometime between '73 and '76; is that when you got to know him, working in his court?

A. Yes, sir.

Q. All right. How many times would you see him over a period of four or five years, that three or four or five year period that you worked with him on these bonds?

A. Well, he would be in courts pretty near every time I was in court in Columbia County. Occasionally I would see him going and coming.

Q. Well, did you see him several times a week or on an average—

A. Yes, sir.

Q. Did you ever bond anybody out who was arrested for a marijuana violation?

A. Yes, sir.

Q. Do you write a good deal of that business in Columbia County?

A. Yes, sir, I would say I wrote about 98 percent of the business.

Q. The marijuana business?

A. Yes, sir.

Q. Could you recall during the years of '73, '4 and '5 and early '76 how often would you be in Judge Smith's office or court?

A. I would be in court about every time I had court, I had cases before the court. As far as ever being in his office, I have been in his office four or five times.

Q. All right, sir. Do you know a man named Poss Lee, Grover Lamar Lee?

A. Yes, sir.

Q. How long have you known him?

A. I have known Poss all my life.

Q. How did you know him?

A. I was born and raised with him; he was in Suwannee County and I was and he was an investigator for the Public Defender's office.

Q. Did you see him in the course of your business?

A. Yes, sir.

Q. You say he was an investigator for the Public Defender?

A. Yes, sir.

Q. In that circuit?

A. Yes, sir.

Q. What counties would that be that Mr. Lee would work in?

A. Third Judicial Circuit included Taylor County, Lafayette County, Suwannee County, Hamilton County, Columbia County and Dixie County and Madison County. There are seven.

Q. All right, sir. Now then you saw him in the court there as a part of his duties as an investigator with the Public Defender; is that correct?

A. Yes, sir. Columbia, Suwannee and Hamilton.

Q. Did you ever see him—would this be in Judge Smith's court that you would see him? Would you and he, Judge Smith, be around there in court at the same time?

A. Yes, sir. I have seen him in all of the courts.

Q. All right, Mr. Ratliff, did you have an occasion to see Sam Smith on or about September the 8th, 1976?

A. Yes, sir.

Q. Where was he?

A. In the Columbia County Courthouse in Lake City in his chambers.

Q. Tell us the circumstances, Mr. Ratliff, surrounding that meeting and how and where you talked to the Respondent Smith exactly.

A. Well, I had a case to be sentenced on September the 9th and I was in Judge Smith's office September the 8th and I was checking on the case and I was talking to his secretary, Ms. Lee, and I went to leave and he called me into his chambers.

Q. All right, sir. Who was present?

A. In his chambers? Four or five people out in the office with his secretary. Nobody but himself in his chambers.

Q. All right. Was the door closed?

A. No, sir. The door was open when I walked by.

Q. Were you all in a room that was separate? Could anybody else hear your conversation?

A. No, sir. I wouldn't think so.

Q. What happened when Judge Smith called you back there to discuss something with you?

A. He told me, he said—I walked in and I noticed he was kind of nervous and he kind of turned to one side and he said, "I have a camper and I have access to some marijuana so I want to know if you know anybody that can handle it."

I said, "Judge, I have never used any marijuana. I don't know anybody that I could sell a cigarette to."

And he says, "Okay." He said, "I will get back to you later."

So he made that statement and I kind of eased to the door to get out of there, sir.

Q. How long was that conversation?

A. Approximately a minute or two, three at the most.

Q. Were you sitting down or standing up?

A. I believe I was sitting down, sir.

Q. What was the demeanor of Judge Smith during this conversation, if you will tell us? How did he act?

A. He kind of acts—he acted upset, shook-up and never did look at me. He just turned to one side and was looking out the window.

Q. You say he didn't look at you?

A. No, sir.

Q. Did he act nervous?

A. Yes, sir, he was nervous.

Q. All right. Did he give you any indication of where he was going to get the marijuana from?

A. No, sir.

Q. Did you do anything after that as a result of the conversation?

A. No, sir, other than that next day I was eating breakfast at the Holiday Inn in Lake City.

Q. What, if anything, did you do then?

A. I told a friend of mine about it.

Q. Who was that friend?

A. Richard Bradley.

Q. What did you tell him?

A. I told him that I had got a shock yesterday. He said, "How is that?" I said, "I was approached about some marijuana."

He said, "Who was it?" I said, "Judge Smith."

He said, "Huh." Kind of like I had hit him when I said that to him.

Q. Mr. Ratliff, did you thereafter have any occasion to have conversations with Respondent Smith about this marijuana or about marijuana in general?

A. I most respectfully decline to answer that question for the reason that any testimony which I give may tend to incriminate me and I stand on my rights against self-incrimination as guaranteed by the Fifth Amendment to the Constitution of the United States and by the Constitution of the State of Florida.

Q. All right, Mr. Ratliff. Let me ask you this: Have you ever been called upon in any other jurisdiction to give testimony regarding these events?

A. Yes, sir.

Q. Did you give testimony?

A. Yes, sir.

Q. Was it given under oath?

A. Yes, sir.

Q. Was it given in a forum in which Judge Smith had an attorney there present to cross examine you?

A. Yes, sir.

Q. Did he in fact cross examine you, the attorney for Judge Smith?

A. Yes, sir.

Q. Was that in Jacksonville?

A. Yes, sir.

Q. Was it in the Federal Court of the United States?

A. Yes, sir.

REPRESENTATIVE RISH: Judge, it's the feeling of Counsel that at this time we will probably encounter a series of assertions of this man's constitutional rights under the U. S. Constitution as well as the State of Florida. We have available transcripts of some of his prior testimony and I think it would be appropriate maybe at this time if the Justice would take over and advise the Senate of our prior conversations in conference.

JUSTICE ENGLAND: Senators, it was anticipated that Mr. Ratliff would, at some point in his testimony, invoke his Fifth Amendment privilege to remain silent. That was first learned at a deposition taken within the last week by Counsel for the Managers and Counsel for the Respondent.

The question was then asked whether previous testimony from the trial which is the subject matter of Article I of the Impeachment could be used in lieu of live testimony. That was the subject of the legal argument which just took place in chambers which Counsel who had not previously had the opportunity for both sides to present to me authorities for and against the use of written previously recorded transcript testimony in lieu of live testimony.

I had previously researched the question on my own to be prepared for that argument.

Counsel for Mr. Ratliff was also present at that meeting in chambers for the purpose of advising that his client would indeed invoke the Fifth Amendment as he has just done and at future questioning regarding the events that succeeded the point you just heard. It became incumbent upon me to rule in chambers and to advise you on whether prior recorded transcript testimony would be admissible under the circumstances and whether he does in fact have the privilege today to invoke the Fifth Amendment without being held in contempt of court in light of the fact that he had previously testified voluntarily in open court in other proceedings on the same subject matter.

I am going to read you the ruling which I summarized for counsel but which I have formalized for your purposes and will give to the Secretary for entry into the proceedings.

On the basis of Homer F. Ratliff's refusal to testify in this proceeding based on the Fifth Amendment to the United States Constitution, the Board of Managers has moved on the authority of Section 92.22, Florida Statutes (1977), to introduce into evidence a transcript of his testimony at respondent Samuel S. Smith's federal trial.

Ratliff agreed to testify at respondent's federal trial under the terms of a plea bargain arrangement with the prosecuting attorneys in that case. He now asserts that his testimony in this proceeding might tend to incriminate him further. In *Rogers v. United States*, 30 U.S. 367, 374 (1951), the Court stated that one who has waived his right to remain silent by testifying voluntarily on one matter may still assert the privilege on a different matter if further testimony might subject him "to a 'real danger' of further crimination."

The assertion of a Fifth Amendment privilege at a second proceeding makes a witness "no less unavailable than death or absence from the country or physical inability to speak." *United States v. Mobley*, 421 F.2d 345, 351 (5th Cir. 1970). Under such circumstances, a duly authenticated transcript of the witness' prior testimony may be admitted into evidence if the party against whom it is to be used had a fair opportunity to confront and cross-examine the witness fully on the same issues in the earlier proceeding. See, e.g., *United States v. Wilcox*, 450 F.2d 1131 (5th Cir. 1971); Cf. *Pendleton v. State*, 348 So.2d 1206 (Fla. 4th DCA 1977). These conditions for admissibility are met in this situation. Ratliff was thoroughly cross-examined by respondent's counsel at the federal trial. Respondent does not contend that his counsel in the federal trial, who is not his present attorney, was ineffective.

Inasmuch as Ratliff's refusal to testify constitutes a "substantial reason" for the Board of Managers' inability to produce him as a witness, within the meaning of Section 92.22(4), and the other requirements of Section 92.22 are satisfied, it is

ORDERED:

that the motion to introduce a transcription of Homer F. Ratliff's prior testimony is granted.

I think before that takes place, however, it would be appropriate if Mr. Cacciatore wishes to cross-examine the witness with regard to the matters he has testified and, of course, if any Senators wish to ask questions of this witness at this time. Mr. Cacciatore?

MR. CACCIATORE: Thank you, Mr. Chief Justice. If it would be appropriate, Mr. Chief Justice, after I have asked the witness some questions, I would like to—so I can be certain in my own mind that the record is clearly protected—I would like to list and enumerate my objections to the procedure in regard to the order the Court has adopted.

JUSTICE ENGLAND: Certainly.

CROSS-EXAMINATION

BY MR. CACCIATORE:

Q. Mr. Ratliff, you mention that you had testified previously in a federal proceeding, federal trial in Jacksonville?

A. Yes, sir.

Q. That was pursuant to a plea agreement?

A. Yes, sir.

Q. You were convicted in that proceeding?

A. Yes, sir.

Q. And as you are sitting here today, you are a convicted felon?

A. Yes, sir.

Q. Pursuant to that plea agreement, you received five years' probation?

A. Yes, sir.

Q. You did not receive any incarceration?

A. No, sir.

MR. CACCIATORE: May I have a moment?

(Short pause.)

MR. CACCIATORE: Your Honor, that's all the questions the respondent has. If I may at this time put our objections in the record.

JUSTICE ENGLAND: You may proceed.

MR. CACCIATORE: First of all, we, the respondent, respectfully object to the procedure whereby the witness comes before the Senate. The Senate in this proceeding is the jury. It's our contention that where the Board of Managers knew previously that there was great likelihood that the witness would rely on his Fifth Amendment privilege, which, of course, he has a right to do, that the respondent has been prejudiced in that regard.

Second, we object to the procedure that pursuant to the order that the Court has announced on the authority of *Hill v. State*, found at 330 So. 2d, 487, decided by the Fourth District Court of Appeal in 1976. And if I may just read one statement from that case, quoting from page 488. "It is a violation of the confrontation clause of the Sixth Amendment for the trial court to permit the jury to hear an individual's extra judicial statement inculcating the defendant if the individual refuses to testify on Fifth Amendment grounds and if the refusal has not been procured by the defendant."

It is our contention, of course, that in this proceeding in this matter the respondent had nothing at all whatsoever to do with this man invoking his Fifth Amendment privilege.

The next basis of our objection would be that to engage in the procedure that the Court has just outlined to the Senate would be a denial of the respondent's Sixth Amendment rights, Sixth Amendment of the constitution of the United States, inasmuch that as counsel for the respondent in these proceedings have not had the opportunity to cross-examine this witness on matters that his transcript from the former trial will touch upon.

So the record will be completely clear, when we deposed or attempted to depose this witness, his counsel was present. And at this time, he relied on his Fifth Amendment privilege and thereby precluded us from being able to ask questions.

There is no way that I in good conscience can stand in this Chamber and suggest that Sam Smith had ineffective counsel at the federal proceeding. Unfortunately, my involvement in this matter has been recent vintage. I was not a participant, neither was Mr. Nutter, in the trial proceedings in Jacksonville. And because of our lack of knowledge of that, we are not in a position today to concede that in fact Sam Smith had effective counsel. That is no reflection on them. But I don't see how we can take any position other than.

Lastly, we think that it's improper and objectionable for the Board of Managers to be able to select certain portions of this transcript or the whole transcript to read to the Senate because it is the respondent's position that these transcripts have not been authenticated.

And by this we mean authentication in the sense that it's my understanding that the witness himself, because of his Fifth Amendment reliance, will not personally authenticate the statements that we are referring to. And it's on this basis that we feel like the statements that will be introduced through the transcripts have not been properly authenticated. May I have one moment, Your Honor?

(Short pause.)

MR. CACCIATORE: Thank you, Your Honor.

JUSTICE ENGLAND: Thank you, Mr. Cacciatore. Your objections are noted.

Senators, a question was asked of me—to interrupt for just a moment—which was whether you would be permitted to make notes during the course of the proceedings. And the answer is yes, you certainly may. Senator Wilson?

SENATOR WILSON: Mr. Chief Justice, I don't know who properly to address the question to so maybe if I can just make a statement I will get to my point. I am not an attorney and as Senator Gallen pointed out, most of us aren't. But what we are here for, as I understand it, is to be or play the role of a jury in the matter of impeachment of one Judge or former Judge Smith. And as I also understand it, when we cast our vote, the burden of proof that we are going to have to weigh is whatever "moves our conscience."

That is a different standard than what had to be considered in that federal court in Jacksonville or wherever it was, if I remember correctly, something like beyond a reasonable doubt.

Now as far as I am concerned, I am not hung up on all these mumbo jumbo technicalities. What I am hung up on is that I have to object, if you will, to a transcript being put here as some sort of evidence that we are supposed to consider. We can't question it. We can't cross-examine it. As far as I am concerned, it's out of order entirely. And I would not concur with the ruling of the Chair that it be admitted, not on any legal grounds, on the basis of no legal cases I can cite. I think it's just flat wrong.

And I think we have got a witness that's been called by the State that is here to testify against Judge Smith. He is here to tell us what this man did in his opinion or in his presence that would constitute a misdemeanor in office or whatever else we have got to consider to move our conscience. And he is the best evidence. And whatever was proved beyond a reasonable doubt in Jacksonville is immaterial at this point. We have the live witness here. And to whatever extent that he can move our conscience, I think that's the best evidence and I think it's wrong to bring in the trial transcript, even though you technically and legally can maneuver perhaps to do it.

So what the question would be is that, you know, how do we get there from here? I don't know if we want a showdown on the ruling of the Chair or whether it's proper to proceed to talk with or ask questions of this witness or what. I guess I am inquiring.

JUSTICE ENGLAND: Senator Wilson, yes, it is proper at this point to question the witness. He may invoke the privilege. And yes, it is proper for a motion to be put to overrule the Chair, for the purpose of further discussion or otherwise. So, you are free to question the witness.

SENATOR WILSON: Well, maybe I could pursue that for just a moment.

EXAMINATION

BY SENATOR WILSON:

Q. Mr. Ratliff, is it Ratliff?

A. Ratliff, yes, ma'am.

Q. If I understand the invocation of the First Amendment privilege, which I certainly concur that everyone has that right, it is to avoid incriminating yourself. Now you did testify before and apparently your testimony is a matter of public record. And this Senate would have no jurisdiction. You are not a public official, are you?

A. No, ma'am.

Q. It is my understanding we would have no jurisdiction, we're not a court of law, against anyone that's not a public official. So my question to you is by testifying, repeating the same things that you have already testified to, how do you feel that could incriminate you?

MR. ZISSER: Mr. Chief Justice, I advise him not to answer that question. That calls for a legal conclusion on the part of the witness.

JUSTICE ENGLAND: I think the witness is probably not competent to answer that. Perhaps I could suggest the concern the immunity of the plea agreement that was entered into in federal court related to federal prosecution. Some of the things testified to might under state law give rise to the possibility of a state prosecution, irrespective of the impeachment—

SENATOR WILSON: Then, Mr. Chief Justice, perhaps you can answer for me, why can't the state officials go get a copy of this transcript and go file charges against this man?

JUSTICE ENGLAND: There is no reason that I know that the state officials can't perform on the basis of public records. They are public records. Whether they would have any difficulty securing an indictment, I do not know.

SENATOR WILSON: Then my next question is if he is prepared to confirm and say "Yes, this is the truth, what I said over there in Jacksonville", he is going to say the exact same thing, what would be the difference of the jeopardy here in a different transcript than from that one if it's the same testimony?

JUSTICE ENGLAND: He is not prepared, Senator Wilson, to say that what he said at that time was the truth.

SENATOR WILSON: Then that's where I am getting at.

JUSTICE ENGLAND: He has been advised by counsel that to confirm that transcript will expose him to further jeopardy.

SENATOR WILSON: If he confirms it, in my legal opinion, it would not expose him to further jeopardy. If he did not confirm it or if he disagreed with it, then perhaps perjury and any number of situations could occur. I cannot cross-examine a piece of paper there. So, again, I will sit down and let other people ask questions. But I may very well just for a matter of record oppose the ruling of the Chair admitting this as evidence.

JUSTICE ENGLAND: Mr. Rish?

REPRESENTATIVE RISH: Mr. Chief Justice, if I could be heard for just a moment in response somewhat to Senator Wilson's remarks and also in response to probably some thoughts in the minds of other people. You expressed exactly what the concern of Mr. Ratliff and his counsel were, the possibility of prosecution in state courts.

Quite frankly, I was confronted with a dilemma. I had to either argue to put into the transcript here a copy of the transcript of the Jacksonville trial, Senator Wilson, or immunize this man as the State Attorney, State Attorney

Lawrence, to immunize him. Mr. Arthur Lawrence I believe is prepared, his office, to immunize him if it will assist in any way.

The Senate can do as it sees fit. At this point, there is an assistant State's Attorney sitting in the audience that's ready to do whatever your desires may be regarding the live testimony of this witness.

As for counsel and myself and our group, we are prepared to put in and have argued successfully that we can put in the transcripts of the Jacksonville testimony and not make that decision. And that's my decision right now. If you see fit to go another route, be our guest. And we will be most cooperative.

JUSTICE ENGLAND: Anything further? Senator Hair?

SENATOR HAIR: Mr. Chief Justice, I just want to make some comments. And then I really don't have strong feelings about whichever way the Senate wants to go on this issue.

First, I would like to say that under Rule 18 of our rules, we say that any evidence that's relevant and probative may be admitted. And we're certainly the jury and the judge in this case in admitting evidence. I know we are the jury and we also are judge in this case. And when a judge normally sits on a trial case without a jury, he also is a judge and a jury. And he many times admits into evidence matters which may not have any probative value but since he is the judge and the jury, he can give whatever weight he might want to give to that particular evidence.

So, in my opinion here, based on the authorities that the Chief Justice has cited, I see no reason that we could not admit into evidence the transcript of the criminal proceedings in Jacksonville. And since we are the judge and the jury, we can give whatever weight we might want to give to those proceedings, to that transcript.

On the other hand, if some of the Senators are concerned about not being able to cross-examine Mr. Ratliff, then it would be my suggestion that we do ask the State Attorney to give Mr. Ratliff immunity so that, as I understand it, he will testify. He will go ahead and testify if he is given that immunity from the state courts.

And so, if there is a concern about his testimony, then it would be my feeling that we ought to grant him or ask immunity to be granted and that he be permitted to testify.

JUSTICE ENGLAND: Senator Brantley?

SENATOR BRANTLEY: Would Senator Hair yield for perhaps a few questions?

Senator Hair, is the State Attorney an officer of the Court under an integrated bar system in Florida or is he an officer of the executive branch of government?

SENATOR HAIR: I don't know if I can answer that—I don't know. I would assume that he is an officer of the court. But he is also part of the executive, I assume. But I understand that he would be able to grant immunity in this case.

SENATOR BRANTLEY: I don't have any question about that, Senator. But having consulted with you on legal points from the beginning, I am very much concerned, Senator, and let me just state my concern and you respond to it if you would.

We're sitting as a court of impeachment. We are somewhere between a political body of one house of the Legislature and a simulated court, all mixed into one. I don't know that I have really rationalized in my own mind what we are.

We're not a legislative body. We're really not a court. We're somewhere in between in my judgment. I am concerned that if this Senate elects to then call in what in part is an arm of the executive, inasmuch as States' Attorneys in this state are controlled and directed by the Chief Executive of our State, to grant immunity to someone who may or may not find himself in some future situation involved in a civil case outside the jurisdiction of the Senate, do we have that right? Do we have that authority to immunize someone that may or may not wind up in court? And that's where I am really concerned because we're not a court of future involvement in perhaps a situation that Mr. Ratliff might find himself in.

SENATOR HAIR: Senator Brantley, I'm not sure that I can answer the question. It does concern me that if he is granted immunity that we would be preventing any future prosecutions. Of course, I don't know. That's something that we ought to decide. I guess that is an issue that perhaps we ought to decide in this matter.

Whichever way we go, the only point I was trying to make, if there is some concern about the prior transcript not being able to cross-examine, then I think we should request that immunity be given. But I personally would be—I personally have no qualms about taking the transcript from the prior trial and allowing that to come in. We can give whatever weight we want to to it.

SENATOR BRANTLEY: Mr. Justice, I agree with what he is saying from a legal standpoint. But where I am coming from is not legal. I am looking at what's fair, at what's fair to the public, what's fair to this Senate, what's fair to this court and what's fair to the witness.

So if the motion is made to grant immunity, then I would like to preserve some time to argue against that because I think it is very, very dangerous.

JUSTICE ENGLAND: Senator Thomas?

SENATOR PAT THOMAS: Mr. Chief Justice, maybe this should be directed at Mr. Rish. Have any of these cases been prosecuted by any of our state court systems?

REPRESENTATIVE RISH: Mr. Thomas, to my knowledge, none of them have been in the state system. But I don't want to say categorically. I will tell you to my knowledge none of them have been anywhere but the federal court. But I can get that information for you in about five minutes or less.

SENATOR PAT THOMAS: My question would be, isn't it reasonable to conclude that any further witnesses, if that rule is invoked, would seek the same—

REPRESENTATIVE RISH: No, sir. This is the only witness we will have this problem.

JUSTICE ENGLAND: Senator Thomas, as I had said, this came up before. As a matter of fact, it was the subject of ruling number seven in the order that I entered on September 11th, reserving decision that had been presented earlier and it was only as to this one witness. I believe Senator Scott would like to speak.

SENATOR SCOTT: Mr. Chief Justice, I would like to inquire a parliamentary inquiry as to the status now of where we are. Did Senator Wilson move to overturn the Chair or what is our status? And can we go forward?

JUSTICE ENGLAND: Senator Scott, I know of no pending motion. The Senate would still be in order to question the witness. Senator Barron.

SENATOR BARRON: Judge, if I may ask a question of the court that concerns me very much about the right of cross-examination relative to the very pertinent point raised by Senator Wilson. Now the authorities that you have cited, I personally tend to agree with, or the introduction of the testimony because of the previous opportunity to cross-examine.

The fact that a jury cannot cross-examine and that the Senate can cross examine and the fact that we are going to be permitted to read testimony that we cannot ask questions on raises a very serious legal question that I am not sure that you addressed before.

I'm wondering now about if the House Managers or whoever would like to consider granting the man immunity, in answer to Senator Brantley's question, yes, he can be granted immunity by the State Attorney, even in his office on a different matter. I think Senator Dunn will agree with that. They're more familiar with that than I because I don't practice criminal law.

But do you think, Judge, that the authorities that you relied on is conclusive in a case such as this where we have a right to cross-examine? That bothers me.

JUSTICE ENGLAND: Senator, yes, I do. The real concern is not the right of the jury to ask questions but the one that Mr. Cacciatore reflected, his inability to go beyond the questions, be they good or bad, well answered or not, that were asked in the first proceeding. The right of the Respondent, in this case, Sam Smith, to elicit information from the witness that would be useful. I recognize that you are operating both as the court and the jury. But I think those concerns are lesser than the right of the person who is affected. And that's what these cases deal with, although it's an unusual procedure, and I can understand the sensitivity of the Senate through Senator Wilson's questions.

As a legal matter, not binding on the Senate, of course, in these proceedings, there would be no difficulty in that ruling standing. But that does not prevent the Senate from, nonetheless, coming to a different conclusion.

SENATOR BARRON: Judge, the thing that bothers me is the opportunity of members of the Senate to pursue the validity of the testimony that we're going to have before us in that we may want to expand upon whatever the attorneys asked before in the federal courts. Have you answered that? Is that included in your answer?

JUSTICE ENGLAND: Yes. Well, to amplify again, as a legal right, I am satisfied that you may accept that written testimony with all restrictions, being unable to further examine. That may not well satisfy your conscience. That may not well satisfy the conscience of counsel for Sam Smith. But as a legal right, yes. And you are the determiners of what your conscience dictates.

I believe Senator Gordon was on the speaker.

SENATOR GORDON: Mr. Chief Justice, I was wondering if you would perhaps amplify in your ruling the precedent you used was you could use the written transcript in a subsequent case but this is a different case. It seems to me that whatever the criminal case was against Mr. Ratliff or whether that testimony or whether that testimony was elicited in a criminal trial against Judge Smith is different than what we are trying today. So therefore items could very well have been excluded in that court proceeding based on the evidentiary rules that would be in place in that kind of a trial that would be matters that we could have asked for. In that case, the transcript would not be useful or as useful in this case

and therefore your precedent of it being useful going from one criminal trial perhaps to another criminal trial would not cover this situation of coming from a criminal trial to this kind of a trial.

That is what bothers me about the use of the written document because we can't cross examine. Do you understand the question?

JUSTICE ENGLAND: I do. Senator Gordon, there should be no difference in the fact that this is an impeachment proceeding and the cases related to parallel or differing or subsequent judicial proceedings.

It could well be that in one judicial forum such as the Federal system the rules of evidence are different from another such as the State. So that I think the rulings that I indicated to you are the only precedents that I could find that were on point. I wish these were more definitive but these were the only ones available but which do cover our jurisdiction federally in the Fifth Circuit. Those precedents contemplate, I think, implicitly, the concern you have. Again, I think you're reflecting Senator Wilson's concern, that there simply isn't something fitting about it and maybe that's the basis for the Senate and its conscience to want to go beyond what the legal precedents will allow and obtain the testimony directly through the process that the Managers have made available to you.

But, again, I have to go back. The legal precedents did contemplate that as closely as they could. The Florida case that I cited was not precisely on this point, but a related point relied on this Fifth Circuit case. This is a 1977 State Court decision. They relied on its authority for introduction of previously issued testimony where there had been the right of confrontation in cross examination to satisfy this.

REPRESENTATIVE RISH: Judge, may I make a comment?

JUSTICE ENGLAND: Representative Rish.

REPRESENTATIVE RISH: You had ruled that we would use the transcript. Mr. Cacciatore has not had a chance because of the Fifth Amendment rights to question this witness like he wanted to. If it's agreeable with you since it's 12:00 o'clock and I believe all the Senators want to get a bite to eat, we are going to suggest to the Court that with the testimony that we have given of this witness in his first contact with Judge Smith, we are going to leave it where it is if it's all right until tomorrow morning. We will take another witness this afternoon and tomorrow morning—between now and then Mr. Cacciatore can take, Mr. Zisser, with your permission, since he will not be used until we talk to this man, he can, and we will be back exactly where we are tomorrow morning at 9:00 o'clock. At that point we shall proffer the transcripts and the Senate may do whatever it desires at that time, Judge.

JUSTICE ENGLAND: Senator Wilson.

SENATOR WILSON: Just one question concerning Mr. Rish's statement. Would that mean that the Senate then tomorrow morning would also have the right to cross-examine this witness on what he has testified to?

JUSTICE ENGLAND: That right is still preserved, that is not lost.

SENATOR WILSON: And also the motion to deny the admission of this transcript, if that issue is still before us?

JUSTICE ENGLAND: Yes. That will be an issue tomorrow morning for the Senate to pass upon that.

It is 12:00 o'clock. According to the rules that you have adopted, this would be the normal lunch hour. I think that will

take care of the matter until tomorrow morning by allowing the Managers to take this witness out of order beyond this point. So at this point, Mr. Ratliff, you're excused but still subject to the oath. You will return tomorrow morning at 9:00 o'clock. Your counsel is available and understands the previous discussion about witness' testimony.

The Senate will at this time stand in recess for one hour to return at 1:00 o'clock for further proceedings.

The Senate recessed at 12:01 p.m.

AFTERNOON SESSION

The Senate was called to order at 1:00 p.m.

JUSTICE ENGLAND: All the Senators will please take their seats.

A quorum present—35:

Barron	Gordon	Myers	Thomas, Jon
Brantley	Gorman	Peterson	Thomas, Pat
Chamberlin	Graham	Plante	Tobiassen
Childers, Don	Hair	Poston	Trask
Childers, W. D.	Henderson	Renick	Vcgt
Dunn	Holloway	Scarborough	Ware
Firestone	Johnston	Scott	Williamson
Gallen	Lewis	Skinner	Wilson
Glisson	McClain	Spicola	

MR. SECRETARY: A quorum is present, Mr. Chief Justice.

JUSTICE ENGLAND: The Chair recognizes Mr. Rish.

REPRESENTATIVE RISH: Mr. Chief Justice, just before our recess for lunch we had discussed waiting until 9:00 o'clock tomorrow morning to take further testimony from Mr. Ratliff. However, we got together and met with Mr. Cacciatore and you at lunch and found out that Mr. Ratliff's wife was scheduled for surgery tomorrow morning in Gainesville. Of course we wouldn't want to hold him here that being the case. So we have made a decision that we will use his testimony a little differently. So if he could retake the stand at this time for a moment we will see if we can get out of this box that we are in.

JUSTICE ENGLAND: Call Mr. Ratliff back to the stand. He has previously been sworn.

WHEREUPON,

HOMER RATLIFF

was recalled to the stand, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY REPRESENTATIVE RISH:

Q. Mr. Ratliff, you have previously testified, have you not, that on an occasion in September, I believe September the 8th, that you had a conversation with Judge Samuel Smith; is that correct?

A. Yes, sir.

Q. Is it correct and do you testify that he either asked you or sent for you and requested that you come to his chambers?

A. Yes, sir.

Q. On that date of September the 8th?

A. I was in his chambers. As I walked by his door he called me into his chambers.

Q. And you had a private conversation with him; is that correct?

A. Yes, sir.

Q. And would you relate, again, the nature of that conversation?

A. Well, I walked in and he kindly — he was kind of scared, nervous type, and he kind of turned to one side and he said, "I have a camper and I have access to some marijuana and I want to know if you know anybody that could handle some."

I said, "Judge, I don't use it. I don't know of anyone that I could sell a cigarette to."

He said, "Okay, sir. I will get back with you later."

Q. All right.

REPRESENTATIVE RISH: Mr. Cacciatore, you may inquire.

MR. CACCIATORE: Your Honor, we previously cross-examined this witness earlier in the proceedings and we have no additional questions.

JUSTICE ENGLAND: Do any of the Senators have any questions of this witness at this time? Senator Wilson.

SENATOR WILSON: Just a couple of questions.

EXAMINATION

BY SENATOR WILSON:

Q. I believe, Mr. Ratliff, that you testified that you did something like between 60 and 75 percent of your cases or your business was in Judge Smith's court; is that correct?

A. Yes, ma'am.

Q. And how many circuit judges are there in that circuit?

A. There was three then, I believe.

Q. What unusual circumstances would occur that would cause anywhere from two-thirds to three-fourths of your cases to be ending up in his court as opposed to the other two judges?

A. Well, it would be in Columbia County and he lived in Columbia County and his office was there and he pretty near held court.

Q. That's the way it's split up and where you did business the most, then?

A. Yes, ma'am.

Q. All right. I noticed that you said that maybe you handled 90 percent of the marijuana cases in Columbia County?

A. I wrote about 98 percent of the drug business in this Third Circuit. I was the only bondsman there.

Q. Not being as familiar with what exactly bail bondsmen do as someone who is one, it's my understanding that you would guarantee the appearance of the person in court to stand trial; right?

A. Yes, ma'am.

Q. And then once the case is tried a person is sentenced, what relationship do you have to the sentencing?

A. None whatsoever.

Q. Then why would you have gone to Judge Smith's chambers on September the 8th because, quote, you had a case that was to be sentenced on September the 9th?

A. Because I was leaving town on the 9th and I wanted to make sure that he was going to sentence this client that day which I had got a notice to have him in court on the 9th.

Q. I see. In other words, your bail also stands good to make sure he shows up for sentencing?

A. Yes, ma'am.

Q. All right. Having handled or written that many bonds for drug traffic people, does it seem unusual that you wouldn't know anyone, if you were inclined to, to sell marijuana cigarettes to?

A. No, ma'am.

Q. It doesn't. How many times did you say you had been in Judge Smith's chambers?

A. Four or five times.

Q. Well, let me rephrase it this way. Wouldn't Judge Smith, would he be considered to be one of the leaders of the community in that area at that time?

A. Yes, ma'am.

Q. A fairly high official in the government?

A. Yes, ma'am.

Q. Did you know him other than on a business-like basis like judge and bail bondsman, did you know him socially or have any other dealings with him?

A. No, ma'am.

Q. Does it not seem strange that he would pick an official that did business in his courts, that you had only been in his chambers a half a dozen times over a three or four year period, to ask you if you could get rid of some marijuana for him? I mean did that seem like a high risk statement to you?

A. Why he picked me I don't know, ma'am.

Q. You walked out and you got out quickly, you said?

A. Yes, ma'am.

Q. You knew then that in your judgment that whatever he was offering or wanting to be done was something that was pretty risky or unlawful?

A. Yes, ma'am. I figured that since he was judge if he got me into trouble that he could get me out.

Q. But you did not go to any other law enforcement authority or anyone at that time to report this incident?

A. No, ma'am.

Q. But you told your friend Bradley the next day; is that correct?

A. Yes, ma'am.

Q. How good a friend is Bradley to you?

A. Well, he taught me to fly and he is a good friend of mine.

Q. Did you meet with him for the purpose of telling him or was it just incidental or something else?

A. No, ma'am. He and I eat breakfast out at the Inn quite frequently, two or three times a week.

Q. But you didn't tell anyone else then other than just in passing that this had happened?

A. No, ma'am.

Q. Thank you.

JUSTICE ENGLAND: Senator Scarborough.

EXAMINATION

BY SENATOR SCARBOROUGH:

Q. I would like to ask a few questions, if I may, Mr. Chief Justice.

Mr. Ratliff, you will have to refresh my memory. You were charged in the Federal courts as I recall, were you not?

A. Yes, sir.

Q. What were you charged with?

A. Distribution of marijuana.

Q. Distribution of marijuana?

A. Yes, sir.

Q. How did you plea?

A. I pled guilty to it, sir.

Q. What were you sentenced to?

A. Five years probation.

Q. Five years probation?

A. Yes, sir.

Q. How did you get such a light sentence?

A. Well, I had a plea agreement with the government.

Q. Pardon me?

A. I had a plea agreement.

Q. Does that mean that you made a deal with the Federal government?

A. Yes, sir.

Q. What kind of deal did you make?

A. To testify and cooperate with the United States Government, the FBI and in any type of investigation.

Q. What kind of sentence would you have been looking at had you not made that plea?

A. They never did tell me, sir.

Q. What do you think it would have been?

A. Approximately five years.

JUSTICE ENGLAND: Any further questions of this witness? Senator Barron.

EXAMINATION

BY SENATOR BARRON:

Q. I just failed to hear what he said originally, one word. You said the Judge said something like he had a trailer and some marijuana — I just didn't hear that word that you said there. What did the Judge say to you?

A. He said, "I have a camper and I have access to some marijuana."

Q. Did you have any opinion from his expression as to what he meant, what the camper had to do with it?

A. No, sir, other than I knew he had a camper.

JUSTICE ENGLAND: Any further questions of this witness? There being no further questions, does counsel for either side have any reason to detain Mr. Ratliff beyond this point or may he be excused?

REPRESENTATIVE RISH: We don't anticipate calling him any further. We would excuse him for today and until further call by our subpoena or notify him. We don't anticipate calling him back. We would appreciate it if the Court would release him from this subpoena which was served on him just before lunch.

JUSTICE ENGLAND: All right. Mr. Cacciatore?

MR. CACCIATORE: We have no objection to this witness being excused, Your Honor.

JUSTICE ENGLAND: Mr. Ratliff, I will excuse you at this time subject to a possible recall but with no anticipation that will happen and you're free to leave this area. I will release you from the subpoena that was issued earlier today.

MR. RATLIFF: Thank you, Your Honor.

REPRESENTATIVE RICHMOND: We are ready to call Duke McCallister.

JUSTICE ENGLAND: We will call Duke McCallister as the next witness. I would recognize Senator Brantley while the witness is coming.

SENATOR BRANTLEY: Mr. Chief Justice, before you swear that other witness let me, if I might, for information of the Senate, inform the Senate that we have discussed, several of us, Senator Hair, Senators Childers, Barron, Lewis, others, discussed with you the possibility of going late this evening. Mr. Rish has informed us that they have three additional witnesses and there is a possibility that they could finish their case sometime this evening, a possibility.

In talking to Mr. Cacciatore he did not have his witnesses scheduled because he was under the impression that the State would take through tomorrow. Through our office, however, Mr. Cacciatore and his people are having their witnesses contacted in order to ascertain whether or not those witnesses could be here tomorrow morning for the purpose of putting on the defense's case.

It will be our intentions, Senators, short of your turning it over, that we work on through this evening with about a 10 or 15 minute break at 5:00 o'clock. We work through about 7:30 or so to determine where we are at that point in time and then we will probably recommend to you that we move the time up tomorrow morning to 8:00 o'clock in anticipation of possibly concluding by mid-afternoon.

So without objection, then, Mr. Justice, I would move that be the schedule for these proceedings.

JUSTICE ENGLAND: Senator Trask has a question.

SENATOR TRASK: Yes. When you say conclude by mid-afternoon, are you speaking of the entire trial?

SENATOR BRANTLEY: Yes, sir. It's entirely possible, although I won't represent to you probable at this point in time. It's entirely possible in the discussion of everyone that we have chatted with that you could get to a final conclusion sometime tomorrow. The reason I don't use the word probable is because it really depends on the amount of time that is taken by the witnesses and I don't think either the prosecution or the defense can give a reasonable estimate at this point in time. I would not want to give the impression that we are trying to

overly push them, that they might not have all of the time necessary that they need with their witnesses.

It's also just as possible that it may go into the next week, sir.

SENATOR TRASK: I see nothing wrong with that procedure if there is a reasonable chance that we can get out. I see no reason to work on late tonight and early morning if we are going to have to be back Monday anyway, sir.

SENATOR BRANTLEY: Our only thinking in the discussion in our office and later with both Mr. Cacciatore and Mr. Rish was that if there is a possibility of us concluding, we ought to put in the hours necessary to attempt to do that because of commitments on the part of everyone in the chambers.

So if there is no objection, Mr. Chief Justice, I would move that that be the schedule.

JUSTICE ENGLAND: Senator Wilson.

SENATOR WILSON: Just one question. Do we know approximately how many witnesses that the defense side will call?

SENATOR BRANTLEY: As at this point in time the defense is contacting four potential witnesses to ascertain whether or not they can be here and possibly one additional one depending on the testimony of one of the prosecution's witnesses a little later.

Is that correct, Mr. Cacciatore?

MR. CACCIATORE: That is basically correct.

SENATOR BRANTLEY: So you're talking about a maximum of five in the event they call a fifth person. Thank you, Mr. Chief Justice.

JUSTICE ENGLAND: Hearing no objection, then the schedule will be that we will take a break near 5:00 o'clock today at a convenient time, short break, possibly continuing to reevaluate the situation at 7:30 and see if the Managers will have completed their case this evening and if that be the case, convene tomorrow morning at 8:00 o'clock for the purpose of beginning the defense's case.

This witness is ready and can be sworn.

WHEREUPON,

DUKE McCALLISTER

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY REPRESENTATIVE RICHMOND:

Q. Would you please state your full name?

A. Duke McCallister.

Q. Where do you live, Mr. McCallister?

A. Like Oak, Florida.

Q. What is your occupation?

A. I am retired now.

Q. What previously was your occupation?

A. I was in the timber business and served about five and a half years as Sheriff of Suwannee County.

JUSTICE ENGLAND: Excuse me, Mr. Richmond. Mr. McCallister, would you lean forward just a little bit. The reporter

may have some difficulty getting that unless you come nearer the microphone.

BY MR. RICHMOND:

Q. How long have you lived in Live Oak, Florida?

A. I have been there since 1930.

Q. What years did you serve as Sheriff?

A. I believe it was—I was appointed when Mr. Lewis died, I believe it was '62, then I served the balance of his term and then I was elected to serve one four years.

Q. So you completed your term as Sheriff when?

A. In 1968-69.

Q. Do you know one Samuel Smith?

A. Yes.

Q. Do you know him to be an elected official?

A. Yes, sir.

Q. And what was his capacity?

A. Circuit Judge.

Q. What circuit was that?

A. Oh, boy.

Q. What county?

A. Suwannee County.

Q. Do you know one Robert Leonard?

A. Yes, sir.

Q. And how do you know him, sir?

A. Through association and as Sheriff and in fact I have known him ever since he was a boy.

Q. Do you know one Grover Lamar Lee?

A. Yes, sir.

Q. Does he have a nickname?

A. Poss.

Q. How long have you known him?

A. Ever since he was a boy.

Q. And where does he reside?

A. In Suwannee County.

Q. Did you have occasion to see Poss Lee on or about the 15th day of September, 1976?

A. Yes, sir.

Q. Where was that?

A. That was at my woodyard there on Haines Street in Live Oak.

Q. Approximately what time of day was that?

A. It was right after lunch, I would say about 2:00, between 2:00 and 3:00 o'clock.

Q. Did you have a conversation with Mr. Lee at that time?

A. Yes, I did.

Q. What was the conversation about?

A. He asked me if I was going to be around town that afternoon and if I was, that Judge Smith was coming over and he would like to talk to me.

Q. And what was your response?

A. I told him I was going to be in town, I wasn't going any place.

Q. All right. At that time did Poss Lee tell you what Judge Smith wanted to see you about?

A. No, sir.

Q. Was there any more conversations at that time with Poss Lee?

A. Well, I don't think there was any more than would probably be here. I believe it was just more or less visiting and we were talking about it.

Q. All right. What happened next during the afternoon?

A. Well, I stayed around the woodyard until about 5:00 o'clock and at that time I went to my sister-in-law's house where my wife was and about the time I got there, well, the telephone rang and it was Poss. And he said the Judge was there and if I could come over—

MR. CACCIATORE: Excuse me. At this time I would object. I didn't make an objection to the first statement by Mr. Lee. But at this point in time I would object to anything that this witness may have been told by someone identified as Lee being hearsay.

JUSTICE ENGLAND: Mr. Richmond, do you have any response to that objection?

REPRESENTATIVE RICHMOND: Your Honor, I think he's not testifying as to what Poss Lee is saying, per se. He is telling what the conversation was about. I would agree that if he was testifying as to what Poss Lee was telling him but as to what the gist of the conversation is, it's not hearsay.

JUSTICE ENGLAND: Mr. Cacciatore, I think he is free to talk about matters within his knowledge, not repeating testimony of other people that might be hearsay and we don't have the strict rules of evidence here, the standard in the Senate rules is probative and relevant and what he knows of his own knowledge certainly is in that category. So I'll overrule the objection.

MR. CACCIATORE: As I understand the Court's ruling, then, that he is not going to repeat what this fellow Lee told him but only the subject matter of the conversation?

JUSTICE ENGLAND: That's my understanding.

MR. RICHMOND: All right. Your Honor, at this time I would like to ask for a further clarification of that. Based on the exception under the hearsay rule of court co-conspirators' statements being admissible, I would wonder if he couldn't testify as to what Poss Lee was telling him.

JUSTICE ENGLAND: I thought you had just indicated, Mr. Richmond, there was no intention that he do testify—

REPRESENTATIVE RICHMOND: Well, I would like to expand that, too, if you would accept that, under the rule that I just stated.

JUSTICE ENGLAND: Are you getting into areas of that nature now, because I didn't understand that to be the subject of this, or are you just raising something for the future?

REPRESENTATIVE RICHMOND: Raising something for the future.

JUSTICE ENGLAND: Let's wait until we get to that bridge and cross it then.

CONTINUED EXAMINATION

BY REPRESENTATIVE RICHMOND:

Q. Now you say that you were invited over to Poss Lee's office?

A. Yes.

Q. And where is his office?

A. It's out on White Springs Road about a block beyond King's Grocery Store, turn to the left and I believe it's the first building on the right.

Q. And that's in what town?

A. Suwannee, Live Oak, Suwannee County.

Q. All right. When you arrived at the office what time was it?

A. I guess it was maybe about 10 or 15 minutes past 5:00, somewhere in that area.

Q. Who was there at the time?

A. Well, there wasn't any cars on the front. The cars were around the back and side and I parked my car in front and I got out and walked in and Mr. Lee met me and greeted me about the time Judge Smith walked from—like we may have just entered or something, he entered from this other office which is in the same building.

Q. All right. Did you have a conversation with him at that time?

A. Yes, sir. He told me that he understood—

Q. Who is "he"?

A. Judge Smith. That Sheriff Leonard had a good bit of marijuana in his jail and that he had a way to dispose of it. And he wouldn't affect Sheriff Leonard at all but he would give an order to destroy or a destruction order, I wouldn't say—one or the other word was used and he said there is a reputation of you and Sheriff Leonard in Live Oak, you all could go out and make a mock destroyal and my connections could pick up the marijuana.

Q. Was there any other substance to the conversations?

A. Let's see.

(Short pause.)

A. I believe that's it.

Q. That was the gist of the conversation?

A. Yes, sir.

Q. All right. Who mentioned the destruction order now to you?

A. Judge Smith.

Q. How long did this conversation take place?

A. Oh, I imagine maybe—maybe 15, 20 minutes, something like that, 25 minutes, something like that.

Q. What was your response to this?

A. I told him that I would see the Sheriff for them and let them know what he said.

Q. That was what Sheriff?

A. Sheriff Leonard.

Q. All right. Did you leave?

A. I left, yes, sir.

Q. Was anything said to you when you were leaving?

A. No. No, sir.

Q. All right. As a result of this conversation, then, what did you do?

A. I went home and to my sister-in-law's house, I got my wife and sister-in-law and niece and I told them what had happened, what was going on.

MR. CACCIATORE: I object. I would object at this time as whatever he told his family as being irrelevant and obviously whatever his family said as being completely hearsay.

JUSTICE ENGLAND: Mr. Richmond, do you care to respond?

MR. RICHMOND: Well, as to relevancy, Your Honor, I think anything that was done and said by him pertaining to this entire conversation with Judge Smith would have to be relevant to the case at hand.

MR. CACCIATORE: Your Honor, I realize that the rules of evidence in the Senate are lax, but plainly what he told his family and his family said in response is just not relevant to the issues before the Senate and, again, whatever his family said in reply to what he said purely falls within the hearsay.

JUSTICE ENGLAND: Mr. Cacciatore, I'm going to overrule your objection. I think it is relevant to get his reactions and statements immediately following this and whether the family may have triggered further action. You may proceed, Mr. Richmond.

BY REPRESENTATIVE RICHMOND:

Q. Go ahead, Mr. McCallister, with your answer.

A. I called, talked and got them together and we talked it over and I told them what had happened and I told them I didn't know whether I was being set up or what was happening or if anything happened to me, I wanted them to know what had taken place. And that was about the end of it as far as, you know, talking.

Q. Did you contact Sheriff Leonard that day?

A. No, sir.

Q. Did you go—go ahead.

A. That's all right.

Q. Did you contact Sheriff—what did you do subsequently then?

A. All right. That was on Wednesday and on Thursday morning about, somewhere between 9:00 and 10:00 o'clock I was down, back down to my sister-in-law's and I called Mr. Lee's office and a lady answered the phone and she said she was his secretary. I asked her if I could speak to Mr. Lee and she said he wasn't in. I said well, could—would she deliver a message for me and I told her who I was. And she said that she would. And I told her to tell Mr. Lee that the fellow he wanted me to see for him wasn't interested in the least in his proposition.

Q. All right. Did you at any time then contact Sheriff Leonard?

A. Yes, sir.

Q. When did you contact him?

A. On Friday morning we had just finished our payroll at my house. We have a little office there where we make up our weekly payroll and my son and I were talking about it and I told him, I said I have got to talk to somebody, I have got to talk to somebody about this thing. And I said I'm going to—what do you think about me calling Robert and he said he thought it would be a good idea.

So I called the Sheriff, Sheriff Leonard, and told him I would like to come by and talk to him. And he said, well, Sheriff—he still calls me Sheriff. He said, "Well, Sheriff—" He told me who he was going to see and I said that I would be by your house in a few minutes to save you coming down here. But he came on by in a little while and we talked over there at my house.

Q. But did you tell him about your conversation with Judge Smith?

A. Yes, sir. I told him. I asked him had he been propositioned about any of his marijuana. I said, "Have you got a lot of marijuana in your jail?" And he said, "Yes."

I said, "Have you been propositioned about it?" He said—

MR. CACCIATORE: Excuse me. Mr. Chief Justice, again, he's getting into something that's purely hearsay. Certainly any conversation that he had with Sheriff Leonard would not fall within that type of co-conspirator declaration act or statement. And, again, I think it's prejudicial to the Respondent, completely hearsay and it doesn't fall within any of the exceptions to the hearsay rule.

JUSTICE ENGLAND: Mr. Cacciatore, I can perceive the need for a continuing ruling, I think, on the matter of hearsay.

As I understand the process of this body and rules that they have adopted, the strict rules of evidence do not apply which would include the hearsay rule. And I don't think it would be a proper objection that simply on the grounds of hearsay or failure to fall within one of the exclusions the matter should not be testified to.

Mr. Richmond, you may proceed.

CONTINUED EXAMINATION

BY MR. RICHMOND:

Q. You can proceed, Mr. McCallister.

A. I asked and he said he had quite a bit of marijuana in the jail and I said, "Have you ever been propositioned about any of it?" And he said, "Yes, I have."

And I said, "Well, what was your reaction?" And he said, "Well, I might have to go back and farm and plow that old mule but I will not take part in any marijuana on that basis."

And I told him, I said, "Robert, I think more of you right now than I ever have thought of you before. And just a little advice from an old man to you that you maintain that and don't ever let anybody get you on the hook because if you do, you have had it as far as I'm concerned." And I told him that.

I said, "If I was in your shoes I would call Judge Agner and get him over here and get me some witnesses and I would go out and destroy that mess or I would get the Florida Department of Criminal Law Enforcement to come over and help me with it. I would get that stuff out of my jail."

Q. All right. Now this conversation took place on a Friday morning?

A. Yes, sir.

Q. How long did that conversation take place?

A. Oh, he must have been there about 30 minutes, I guess, sir.

Q. All right. After talking to Sheriff Leonard, did you ever go back to Poss Lee or Judge Smith?

A. No, sir.

Q. Did they attempt to contact you after that?

A. Not that I know of.

REPRESENTATIVE RICHMOND: I have no further questions.

JUSTICE ENGLAND: Mr. Nutter, you may inquire.

MR. NUTTER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. NUTTER:

Q. Sheriff McCallister, you retired from being a Sheriff in 1969; is that correct?

A. Yes, sir.

Q. And did you see the individual that you knew as Sam Smith from the time that you retired up until the day you say you had this meeting?

A. Well, now, it's possible that I have seen him passing in a car or something like that. But as far as being in the courthouse or meeting him face-to-face, no, sir.

Q. So from 1969 up until the day of this alleged meeting you had not seen Sam Smith?

A. No, sir.

Q. Mr. McCallister, it is true that it was this gentleman Poss or Possum Lee that contacted you and told you that a person by the name of Judge Smith or Judge Smith wanted to meet with you; is that right?

A. He told me—repeat that, please?

Q. That the individual, Possum or Poss Lee, told you that a person who he called as Judge Smith wanted to meet with you?

A. Yes, sir.

Q. And he was the one that made contact with you?

A. Yes, sir.

Q. And later on that same day or around 5:00 o'clock at your sister's he called you there, this individual known as Poss Lee?

A. That's correct. That's right.

Q. At any time did you talk to anybody over the phone that purported to be Judge Smith or Sam Smith?

A. Not over the phone, no, sir.

Q. And as I understand your testimony you then went into Live Oak to Mr. Lee's office?

A. Yes, sir.

Q. Later that evening or afternoon?

A. When he called me I went over there, yes, sir.

Q. And when you walked in the first person you saw was who?

A. Poss Lee.

Q. Poss Lee?

A. Yes.

Q. And then you had occasion to see this other person that was there and you say that was Judge Smith?

A. That's right.

Q. All right.

A. But it was just a matter of seconds in the time lapse from seeing both of them in the building.

Q. Now do you recall, Sheriff McCallister, at that time, at that particular meeting, whether the individual that you saw that you have identified as Judge Smith or Sam Smith was clean shaven or whether he had a mustache or a beard?

A. Your Honor, I couldn't swear to that either way because—but I know the Judge.

Q. All right. Do you remember your testimony in the Jacksonville trial with respect to this case, Mr. McCallister?

A. Yes, sir.

Q. Do you remember testifying in that trial that the individual that you saw was clean shaven?

A. No, sir.

Q. You don't recall that?

A. No, sir.

(Short pause.)

Q. Mr. McCallister, I would like to refer to Page 1884 of the transcript of the Jacksonville testimony and Mr. McCallister, let me ask you if you recall these questions and your answers. The question was:

"He looked trim and nice on that day in September?"

Your answer: "Yes, sir, always."

Question: "Clean shaven?"

Answer: "I'm sure he was. I didn't look particularly but I'm sure that he was."

Do you recall that, Mr. McCallister?

A. Yes, sir, but I wasn't swearing he was.

(Laughter.)

Q. All right. Mr. McCallister, with respect to this meeting with Poss Lee and Sam Smith as you have identified him, who is it that did all of the talking in that meeting?

A. Well, they both did some talking but now which one said the most words, I don't know.

Q. All right. Now isn't it a fact that Poss Lee is the one that talked to you about this marijuana in the jail and he is the one that gave you all of this information and not the individual you have identified as Sam Smith?

A. The Judge is the one that he told me he had quite a bit of marijuana in the jail and he had a place to dispose of it.

Q. All right. Now do you recall talking to an FBI agent by the name of Queener?

A. Yes, sir. He liked to have scared me to death.

(Laughter.)

Q. Do you recall telling him that Poss Lee did all of the talking at that meeting?

A. I tell you what, I couldn't tell you exactly what all I told that FBI man. I was in my office, busy, and he walked in and flashed an FBI badge on me and poured it to me and I didn't even know what was happening.

(Laughter.)

A. I'm not an attorney.

Q. Sheriff, I can't say that I blame you. But when you talked to Sheriff Leonard then about this particular incident he did tell you that he was holding marijuana in his jail; didn't he?

A. Yes.

MR. NUTTER: Can I have one moment, Your Honor?

JUSTICE ENGLAND: You may.

(Short pause.)

MR. NUTTER: We have no further questions, Your Honor.

JUSTICE ENGLAND: Representative Richmond, anything on redirect?

REDIRECT EXAMINATION

BY REPRESENTATIVE RICHMOND:

Q. How long have you known Judge Smith?

A. Well, I would say 20 years, 15-20 years.

Q. Do you know him well?

A. Yes, sir.

Q. You saw him frequently during those 20 years?

A. Off and on, yes, sir.

Q. Did you have occasion to work with him, you as sheriff and he as judge?

A. For five and a half years, yes, sir.

Q. How bad did they beat you at the polls in approximately '68?

A. Beg your pardon?

Q. How bad did they beat you at the polls in approximately '68?

A. I didn't have any opposition.

Q. When did you retire?

A. At the end of that term. Oh, you mean from my business?

Q. No, as sheriff.

A. Oh, as sheriff, at the end of that term.

REPRESENTATIVE RICHMOND: Thank you. No further questions.

MR. NUTTER: Your honor, I have one more question.

JUSTICE ENGLAND: Mr. Nutter?

RECROSS-EXAMINATION

BY MR. NUTTER:

Q. Sheriff, you have testified that you have not seen Sam Smith now for eight years up to this point of the meeting in September?

A. I didn't testify I hadn't see him. I hadn't seen him face-to-face. I had maybe seen him pass in the car or seen him crossing the street or go in a restaurant or, something. He worked—you know, he was a judge here in Live Oak and worked that circuit.

Q. As far as a face-to-face kind of confrontation or discussing anything with him face-to-face, you had not done that for a period of eight years?

A. From the time I left the sheriff's office until that afternoon, yes, sir.

MR. NUTTER: Thank you very much.

JUSTICE ENGLAND: Do any senators have any questions? Senator Scarborough?

SENATOR SCARBOROUGH: Mr. Chief Justice, I have one question.

EXAMINATION

BY SENATOR SCARBOROUGH:

Q. Mr. McCallister, as I understood your testimony sometime late in the afternoon 5:00 o'clock, the Judge came to your office?

A. No, sir.

Q. Came where?

A. He was at Mr. Lee's office.

Q. Well, I beg your pardon. You met the Judge some place?

A. Right, yes, sir.

Q. Obviously, you agree with a lot of people that the distribution of marijuana like this is bad, wrong, do you not?

A. Repeat that, please?

Q. You obviously feel like that dealing in marijuana is bad?

A. Yes.

Q. It's against the law and it's wrong and all this kind of thing?

A. Yes, sir.

Q. You said I think that this was about 5:00 or 6:00 o'clock that Smith made this proposition to you, is that right?

A. Yes, between 5:00 and 6:00.

Q. The following day, you then had the visit with Sheriff Leonard?

A. No, not the following day.

Q. What day was it?

A. Friday.

Q. Two days later?

A. It was a Wednesday and it was after 5:00 o'clock that afternoon when I talked to him. And then I talked to Mr. Lee's office on Thursday. And then I talked to the Sheriff Leonard on a Friday morning.

Q. The thing that I want to know, Mr. McCallister, is why didn't you just tell the Judge right then when he made that proposition to you that you weren't interested?

A. Well, I don't know. I tell you what. That's what I should have done, I guess, possibly. I wanted to be courteous. And the

hardest word in the English language for me to say is no to anybody. I did tell him that I would see him for them. And I excused myself. And I will be frank with you. I was pretty well shook up.

Q. It took you two days to get around—

A. No, it didn't take me two days to get over it.

Q. A day and a half?

A. I wasn't all that time getting over the shock, no, sir.

JUSTICE ENGLAND: Any further questions? Senator Williamson?

EXAMINATION

BY SENATOR WILLIAMSON:

Q. Sheriff, when you had this meeting on that afternoon, did you either address the Judge by name or did he address you by name?

A. We addressed each other. But I always called him Judge.

Q. Did you call him Judge that afternoon?

A. I'm sure I did.

Q. Can you specifically remember?

A. Well, I don't remember exactly but I think it was—I'm sure it was Judge, maybe Judge Smith.

Q. And I think you said that you were supposed to get back with them or were they supposed to get back to you?

A. No, sir. I told them that I would see him for them and let them know.

Q. And you never heard anything further from either Lee or from the Judge, is that your testimony?

A. That's right, sir.

Q. You never got back to them either?

A. No, sir. I did when I called Mr. Lee that next morning. I told him that he wasn't interested, that the Sheriff wasn't interested at all in his proposition.

Q. That would have been on that Friday?

A. Thursday.

Q. How could you have called him the next morning when you didn't see the Sheriff until Friday?

A. I wasn't intending to see anybody. I was going to dispose of it and go on and keep my mouth shut and tend to my business. But I got to thinking about it and I have got grandchildren. And I got to thinking about it as a duty and I should do it and that's when I called the Sheriff.

Q. Then you called Lee back and told him that they weren't interested before you saw the Sheriff?

A. That's right, sir.

JUSTICE ENGLAND: Any further questions? Senator Ware?

EXAMINATION

BY SENATOR WARE:

Q. Sheriff, why did he come to you when you hadn't seen him for eight years and they asked you to do this for them?

A. Well, I think it's possible that Sheriff Leonard and I were very close friends. And if that wasn't the reason, I don't know.

JUSTICE ENGLAND: Senator Spicola, did you have any questions?

EXAMINATION

BY SENATOR SPICOLA:

Q. Mr. McCallister, did they discuss with you for being a messenger that you would get any benefit out of this or why?

A. Yes. Lee said that there's a way to make some money, big money, quick or big money quick. I don't remember which he said.

Q. And you were to be part of that?

A. I suppose I would have.

JUSTICE ENGLAND: Senator Barron?

SENATOR BARRON: I just want somebody to tell me how that fellow possibly got his name.

THE WITNESS: You have to know him.

SENATOR BARRON: I would like someone to tell me that.

JUSTICE ENGLAND: Any further questions from the senators?

Mr. Rish, Mr. Cacciatore, I take it this witness can be excused? Oh, I'm sorry, Senator Wilson?

EXAMINATION

BY SENATOR WILSON:

Q. Just one question, please. You said, Mr. McCallister, that you knew Sheriff Leonard and you knew Poss Lee, I believe in your words, since they were boys?

A. Yes, ma'am.

Q. Are they both younger or are they both about the same age?

A. I would think they're about the same age, yes, ma'am.

Q. Younger than you?

A. Quite a bit.

Q. Then I assume that Poss Lee is more or less the same age as Sheriff Leonard and you knew both of them since they were boys. Did they both know each other since they were boys?

A. I think so, yes, ma'am.

Q. Why couldn't Poss Lee go proposition Sheriff Leonard himself without bringing in other people?

A. Talking to the Sheriff afterward when I talked to him, he said they had been to him.

Q. So, okay, then did you draw a conclusion from that at all that they needed you to help persuade him?

A. It might have been that. The Sheriff and I were very close friends.

SENATOR WILSON: Thank you.

JUSTICE ENGLAND: It appears there are no more questions. Mr. McCallister, you may be excused.

(Whereupon, the witness was excused.)

JUSTICE ENGLAND: Mr. Rish, I believe you indicated you would like a few moments before calling your next witness. Is that still your desire?

REPRESENTATIVE RISH: Yes, sir. We need a couple of minutes, Your Honor, to set up the tape recorders. And we need to waive the rules so that Mr. Weikel and Mr. Kirk can come in and set up our equipment for us.

While we're out, if it's all right, we will distribute the transcripts of some testimony that the Senators will have, which will be an aid to them in listening to the tapes.

JUSTICE ENGLAND: The Senate will stand in informal recess for approximately eight minutes, return at 2:00 o'clock.

The Senate recessed at 1:50 p.m. and was called to order at 2:00 p.m. A quorum present—35:

Barron	Gordon	Myers	Thomas, Jon
Brantley	Gorman	Peterson	Thomas, Pat
Chamberlin	Graham	Plante	Tobiassen
Childers, Don	Hair	Poston	Trask
Childers, W. D.	Henderson	Renick	Vogt
Dunn	Holloway	Scarborough	Ware
Firestone	Johnston	Scott	Williamson
Gallen	Lewis	Skinner	Wilson
Glisson	McClain	Spicola	

THE SECRETARY: Quorum is present, Mr. Chief Justice.

JUSTICE ENGLAND: Will the Senators please take their seats? Quorum is present. Mr. Rish, are you ready to proceed?

REPRESENTATIVE RISH: Yes, sir, Your Honor. We are going to call to the stand Sheriff Robert Leonard. And while he is coming we need to discuss some other matters and stipulations that I need to read to the Senate.

JUSTICE ENGLAND: Let's call Mr. Leonard to the stand from the witness room, please. Go ahead, Mr. Rish.

REPRESENTATIVE RISH: All right, sir. We have a stipulation that was entered under the auspices of the Chief Justice, signed by Mr. Cacciatore and by the Manager that provides that the tape recordings of the face-to-face conversation made on September 10th, 1976, and November the 16th, 1976, are authentic and contain the voices of Samuel S. Smith and Robert Leonard.

Number two, it is stipulated there have been no alterations, deletions or additions to the tape and that chain of custody of said tape has been the Federal Bureau of Investigation under their procedures and the clerks of the Circuit Court and Appeals Court which have heard the case.

Number three, Managers have agreed that on the basis of the above stipulation they will not introduce the logs of the chain of the custody of the tapes.

Number four, the Managers further agree the only taped conversations they will introduce are those described above. It is agreed that tapes exist of telephonic conversations of September 9th, 1976, and the morning of November 16th, 1976, where Sheriff Leonard called Judge Smith and the face-to-face meetings, tapes of which are referred to above, were arranged. It is also agreed that the taped conversation of September 22nd, 1976, will not be used as it is garbled.

It is stipulated that for the purpose of playing tapes before the Court of Impeachment they may be advanced to the point where the conversation between Sheriff Leonard and Judge Smith actually began.

Further, the playing of the tapes may be terminated where their discussion ends. Those portions of the tape excluded con-

tain no conversation or material of any evidentiary value in this cause.

I would like to say, Judge, that the tapes and the pictures that we have under the orders of the United States District Court and the procedures of the FBI are the property of the Federal Government and that they are allowing us to use the originals for clarity. And we have copies of the pictures and of the tapes which we are going to add to be substituted and we will use the originals and then substitute these. Mr. Cacciatore is in agreement that these are authentic copies. And Judge, that's the only way we could use them because they have to take them back and put them in their Federal Court file. So without objection, we would like to ask, if you could, if you would grant us that permission right now.

JUSTICE ENGLAND: Mr. Rish, wasn't that the subject of the report of the special committee which was adopted the other day, Point Number 3, that that process was permitted and the Senate approved that report?

REPRESENTATIVE RISH: Yes, sir, with regard to copies, generally, yes.

JUSTICE ENGLAND: Fine.

REPRESENTATIVE RISH: There was a further stipulation, Judge, if I could put that in the record. It is stipulated and agreed—the stipulation has been signed by Mr. Cacciatore so it is approved. And we are putting into the record that we just read.

JUSTICE ENGLAND: Yes, sir. Go ahead.

REPRESENTATIVE RISH: This is a further one that's stipulated to by Mr. Cacciatore and by Mr. Nutter and by the House Managers.

It is stipulated and agreed that 1500 pounds of baled substance obtained from the U. S. Customs and loaded on the rented truck and taken into custody by Sheriff Robert Leonard at I-10 Agricultural Inspection Station and later conveyed by Sheriff Leonard to the Suwannee landfill on November 16th, 1976 was marijuana.

Number two, on the basis of this stipulation, the managers agree not to introduce actual samples of the marijuana, pictures of the red and white Chevrolet truck in which the marijuana was allegedly loaded from the rental truck at the Suwannee County landfill or pictures of the bales of the marijuana in a shed.

Managers further agree that of the original 1500 pounds of marijuana, only 900 pounds were recovered and 600 pounds were not recovered and have not been recovered. Managers stipulate to the fact that a beeper transmitter was implanted in the marijuana by Sheriff Leonard prior to it being brought to the Suwannee County landfill in the rental truck.

At some point the beeper signal terminated and the transmitter was not to be found in the 900 pounds of marijuana which were recovered.

The parties also stipulate as to the fact that no arrests or prosecutions separate from the case of *United States of America vs. Samuel S. Smith, et al.* were made as a result of the 600 pounds that were missing.

It is stipulated and agreed that Judge Smith never had physical possession of the marijuana at any time with regard to this case.

Mr. Cacciatore, if you would check that.

MR. CACCIATORE: That was a very accurate reading.

REPRESENTATIVE RISH: I'm glad we can finally agree on something, Mr. Cacciatore. There is a further stipulation, this stipulation made and entered by the Board of Managers on the part of the Florida House of Representatives by and through the undersigned counsel and Respondent Samuel S. Smith by and through his undersigned counsel is as follows. It is stipulated and agreed that a load of marijuana originally seized by Sheriff Robert Leonard was placed in a locked rental truck in the parking lot south of the Suwannee County Jail on September 20th, 21st and 22nd of 1976.

Information was released that said marijuana had been seized and was in the parking lot. During this period of time there was no attempt by anyone to obtain said marijuana.

JUSTICE ENGLAND: Is that the conclusion of the stipulation?

REPRESENTATIVE RISH: That's the conclusion of the stipulation, Judge. We would like to say that when we get Sheriff Leonard on and at the appropriate time when we're going to play the tapes, we have requested that the Court allow us to pass out transcripts so that the Senators can follow along with the tapes, can see the transcript of the tapes themselves. And at this time we would like to call—

MR. CACCIATORE: If I may, to try to save some time—if the Court please, the Chief Justice will recall that one of the motions that I had filed dealing with these transcripts, I would like to revisit that matter just for a moment, Your Honor, so that I can be sure that the record will be clearly protected on this matter.

I do understand the Court's ruling. I would just like the record to reflect that we do object to the transcripts of the recorded conversations being handed out to the Senators on the basis that the tape recordings are the best evidence and that the transcripts are not properly authenticated but amount to opinion by a lay witness who is not trained in these matters and it creates undue emphasis. Thank you, sir.

JUSTICE ENGLAND: For the edification of the Senate, what you have heard is part of the continuing work of the House Managers and counsel for the Respondent have done in preparation for today to make your task easier. Those stipulations resulted in a great saving of time, resulted from the cooperation of counsel which was excellent.

The matter Mr. Cacciatore last referred to does appear as part of the order which is in your Desk Book this morning. The composite order, which I entered, Item Number 4 deals specifically with this, the passing out of transcript in which I denied the motion on the grounds that it would create undue emphasis and the other reasons suggested by Mr. Cacciatore. At this time, we will swear the witness.

WHEREUPON,

ROBERT LEONARD

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY REPRESENTATIVE RISH:

Q. Would you please state your name?

A. Robert Leonard.

Q. Where do you live?

A. Live Oak, Florida.

Q. What is your occupation?

A. Sheriff of Suwannee County, Florida.

Q. How long have you been a sheriff?

A. Since January 1973.

Q. Where do you live, Sheriff?

A. Route 5, Box 285X, Live Oak, Florida.

Q. What county is that in?

A. Suwannee County.

Q. Where were you born?

A. Suwannee County, Florida.

Q. How long have you been there?

A. All my life except in the service and going to school a while and on the Highway Patrol.

Q. Did you go to night school there?

A. Yes, sir.

Q. What town did you attend high school?

A. Live Oak.

Q. Did you go to college after you finished high school?

A. For a while, up in Tennessee.

Q. You say you were in the military service?

A. Yes, sir.

Q. What service were you in?

A. U. S. Army.

Q. How long were you there?

A. Two years.

Q. After you got out of the service, what did you do?

A. Farmed.

Q. Where was that, in Suwannee County?

A. Yes, sir.

Q. What kind of farming?

A. Just general farming.

Q. What did you do after you left farming or did you leave farming and go into a different occupation?

A. Went with the Florida Highway Patrol.

Q. Do you remember when that was that you went with the Florida Highway Patrol?

A. Yes, sir, October 1st, 1963.

Q. How long were you with the patrol?

A. Until May 31st, 1968.

Q. Where were you stationed during your tour of duty with the highway patrol?

A. Bunnell, Florida, Nassau County and Columbia County, Florida.

Q. What did you do after you got through with the highway patrol?

A. Went to work with the Division of Beverage.

Q. Where was that?

A. Live Oak.

Q. What were your duties while you were working with the Division of Beverage?

A. To enforce the beverage laws of the State of Florida.

Q. Where did you go when you left the Beverage Department?

A. I ran for Sheriff in 1972 and took office in 1973.

Q. Then it would have been in September of '72 that you ran?

A. Yes, sir.

Q. And took office in '73, January '73?

A. Yes, sir.

Q. Have you had any election since that time?

A. Yes, sir, 1976.

Q. Did you have a runoff that year?

A. No, sir.

Q. Did you run in the general election in November?

A. I didn't have to run.

Q. Are you married, Sheriff?

A. Yes.

Q. Do you have any children or have a family?

A. I have one son.

Q. What is your jurisdiction as sheriff? What all do you cover?

A. Suwannee County.

Q. Where is that located in relation to Columbia County?

A. It joins Columbia County on the west.

Q. What other counties border Suwannee County?

A. Hamilton, Madison, Lafayette and Gilchrist.

Q. How far is it from Live Oak to Lake City, approximately?

A. 24 miles.

Q. What Judicial Circuit are you in?

A. The third.

Q. What is the third comprised of, which counties?

A. Columbia, Hamilton, Madison, Suwannee, Taylor, Dixie and Lafayette.

Q. But now your jurisdiction, of course, is just Suwannee County as sheriff, is that correct?

A. That's right, sir.

Q. What relationship do you have with the City Police in Live Oak, if any? Who handles those cases inside Live Oak?

A. We handle all the felony cases and handle part of the misdemeanor cases.

Q. Who is your State Attorney in that circuit?

A. Mr. Arthur Lawrence.

- Q. Where is your office physically located?
- A. In the courthouse in Live Oak.
- Q. Does the FDCLE have an office there?
- A. Yes, sir.
- Q. Does the FBI have an office there?
- A. No, sir.
- Q. If you have occasions to deal with the FBI, where do you go? Who is your contact and where is he?
- A. Out of Tallahassee.
- Q. Sheriff, in your duties as sheriff, do you have any occasion to fool with bail bonds, the setting of them?
- A. Not the setting of them, no, sir.
- Q. Who sets the bonds?
- A. The judge.
- Q. What part if any do you play in releasing the prisoners?
- A. I collect the bonds.
- Q. So the judge says 200 or 500 or whatnot, you make arrangements to see that bond is posted before you let the man out, is that right?
- A. Yes, sir.
- Q. Who are the judges in your circuit or who were the judges in 1976?
- A. Judge Smith, Judge Agner and Judge Drury.
- Q. Three judges, is that correct?
- A. Yes, sir.
- Q. Is a part of I-10 in your jurisdiction?
- A. Yes, sir.
- Q. Do you have any agricultural inspection stations in your jurisdiction?
- A. Yes, sir.
- Q. How many?
- A. If you will give me just a moment to count them up.
- Q. Okay.
- A. Five different locations.
- Q. You have five inspection stations, agricultural, within your county, is that right?
- A. Yes, sir.
- Q. Sheriff, I believe one of the duties of those people is to stop big trucks, is that right, coming through?
- A. Yes, sir.
- Q. From time to time do they stop trucks that have contraband of one sort or another or drugs on them?
- A. Yes, sir.
- Q. What happens when that occurs?
- A. They call us.
- Q. And you go out and do whatever is necessary?
- A. Yes, sir.
- Q. Do you know Sam Smith, the Circuit Judge?
- A. Yes, sir.
- Q. Do you know where he lives?
- A. Yes, sir.
- Q. Do you see him or in 1976 did you see him often?
- A. When he would hold court in Suwannee County.
- Q. Was that enough that you would know him if you saw him come in now, would you know him now or did you know him then?
- A. Yes, sir.
- Q. Fairly well?
- A. Yes, sir.
- Q. Did you know a fellow named Grover Lamar Possum Lee?
- A. Yes, sir.
- Q. Sometimes called Poss, is that right?
- A. Yes, sir.
- Q. Poss, is that short for Possum?
- A. Yes, sir.
- Q. Do you know a fellow named Homer Franklin Ratliff?
- A. Yes, sir.
- Q. How long have you known him?
- A. About 32 years now.
- Q. In 1976 what business was Ratliff in, do you know?
- A. Bailbondsman.
- Q. Where was his office?
- A. Lake City, Florida.
- Q. Was he in any other businesses to your knowledge besides the bailbond business?
- A. Not to my knowledge.
- Q. Did you have occasion to see him around the courthouse in his bailbond business operation?
- A. Yes, sir.
- Q. Was it unusual for him to be around there?
- A. No, sir.
- Q. How well do you know Respondent Smith, Samuel Smith?
- A. Mr. Rish, it's just according how you ask me how well did I know him. If you ask me do I know him as a Circuit Judge, yes, sir, I know him.
- Q. Was that your prime knowledge of him?
- A. Yes, sir.
- Q. You all didn't drink together or play golf together or go fishing together? Did you do any of those things?
- A. No, sir.
- Q. So you knew him professionally as a Circuit Judge and you as the sheriff in his circuit, is that right?
- A. Yes, sir.

Q. When did you first meet him?

A. I couldn't say.

Q. Did you know him before he got elected Circuit Judge?

A. No, sir.

Q. Then you met him when he got elected, whenever that was?

A. That's when I got to know him.

Q. I assume that you came in contact with him fairly regularly in your course of duties, him as judge and you as a sheriff, is that correct?

A. Yes, sir.

Q. When did you become Sheriff?

A. January 1973.

Q. How long have you known Poss Lee?

A. About 32 years.

Q. How do you know Poss? What is your relationship to him?

A. We were both raised in Suwannee County.

Q. Are you all fairly near the same age?

A. I am a little older than Poss.

Q. But you grew up about together in the same town?

A. Yes, sir.

Q. Which town was that?

A. Live Oak.

Q. In 1976, between July and November, what was Poss Lee's occupation?

A. Pardon me, Mr. Rish, would you ask me that again?

Q. What was the occupation of Poss Lee between July and November of 1976?

A. He was an Investigator for the Public Defender's Office and in the grassing business.

Q. In the grassing?

A. Yes, sir.

BY REPRESENTATIVE RISH:

Q. In the grassing business?

A. Yes, sir.

Q. The landscaping type business?

A. Yes, sir.
(Laughter.)

Q. Did you know about any former occupations that he had?

A. Yes, sir.

Q. What were they?

A. Deputy Sheriff, played some pro ball.

Q. Professional football?

A. Yes, sir.

Q. Who did he play for?

A. He played for Jacksonville and played up in the Canadian league.

Q. All right. Let me ask you, Sheriff, is there a place called Scotty's over in Live Oak?

A. Yes, sir.

Q. What type of place is it?

A. It's a restaurant.

Q. In 1976 was this a place that you went to frequently?

A. Yes, sir.

Q. Did Poss Lee go there frequently?

A. Yes.

Q. Let me ask, in the latter part of July, 1976, on a particular Sunday, did you have an occasion to have a conversation with Poss Lee?

A. Yes, sir.

Q. Where was that conversation?

A. In my car.

Q. Where did you all get together that day?

A. Scotty's Restaurant.

Q. Other than the later part of July—was it on a Sunday, did you say that?

A. It was on a Sunday, yes, sir.

Q. Who was present during that conversation?

A. Poss and myself.

Q. Did you meet him at Scotty's—did you all get together at Scotty's that night?

A. Yes, sir.

Q. And you got in your car, did you say?

A. Yes, sir.

Q. Did you all have a conversation of an unusual nature that night that you recall at this time?

A. Yes, sir.

Q. What was the nature of that conversation?

A. It came up about the election that I would have to have a lot of money to run that year and that I had the marijuana and Judge Smith could use it.

Q. That was Possum Lee that said that to you?

A. Yes, sir.

Q. What was your response to him?

A. I asked him how did I know I could trust Judge Smith and he stated if I didn't trust Judge Smith to sign an order that he would get another judge.

Q. What did you tell him about it then?

A. I told him I would have to think it over.

Q. How long did the conversation take place about the marijuana, do you remember?

A. No, sir. I know we rode around a pretty good while but all of that conversation wasn't about marijuana.

Q. Did you all have a discussion about how you would account for it if a thousand pounds or two thousand pounds or something pounds came up missing from the jail?

A. With a destruction order.

Q. Would you tell us what that is all about now?

A. The judge signs it showing the authority to get rid of that marijuana or any other thing.

Q. What does it do, direct you or somebody else to do something with it?

A. Yes, sir, destroy it.

Q. How do you destroy it?

A. We burn it.

Q. You burn it?

A. Yes.

Q. At that time did you have any marijuana in your jail?

A. Yes, sir.

Q. About how much did you think you had?

A. I'd say approximately 1500 pounds.

Q. Why do you keep marijuana in a jail?

A. Until the court's case is over with, that's the only place we have to store it.

Q. You say then it's for evidence?

A. Yes, sir.

Q. What do you do normally after your case is over?

A. Get a judge to handle the destruction order to get rid of it.

Q. When Poss Lee discussed with you about the marijuana and about Judge Smith, did you tell anybody about it?

A. Yes, sir.

Q. Who did you tell?

A. Gary Ramsey with the FBI and Jim Taylor and Mr. Arthur Lawrence.

Q. Who is Jim Taylor?

A. He's with the Florida Department of Law Enforcement.

Q. When did you tell Mr. Lawrence and Mr. Ramsey?

A. I told Mr. Ramsey, I believe it was on the 27th of July, and Mr. Lawrence and Jim Taylor a little after that.

Q. So you told the FBI agent first?

A. Yes, sir.

Q. And then you told the State's Attorney and the FDCLE?

A. Yes, sir.

Q. Was there any particular course of action or any plan that you all decided upon when you told these people?

A. I told Mr. Ramsey I wasn't doing anything until after election.

Q. Why did you tell him you wouldn't do anything until after the election?

A. On account of it being political and it wouldn't hold as much weight if he had been caught during the time I was running for Sheriff.

Q. Well, after you told Mr. Ramsey about it, did you again talk to Mr. Lee about it, about the marijuana?

A. Yes, sir.

Q. Do you remember if it was — do you remember when it was?

A. Around the first of August.

Q. Now tell us about that conversation, Sheriff, if you will?

A. He and Judge Smith came to see me at the office.

Q. That was about the first of August?

A. Yes, sir.

Q. How long was that now, you think, after Poss had first talked to you about it?

A. I would say probably three weeks, I would guess.

Q. And whose office was it in, yours?

A. It was in the Sheriff's office, yes, sir.

Q. And they came to your office?

A. Yes, sir.

Q. Tell us what happened, if you will, Sheriff Leonard, at that time?

A. Judge Smith came and asked me had I given any more thought of what Poss had talked to me about and we talked about the destruction order and how to go about doing it.

Q. Well, at that time was there any conversation with Judge Smith or did he make — did he tell you that you were going to get paid or some money out of this deal if it came off?

A. If you're asking me, Mr. Rish, did he tell me an amount of money, the answer would be no, sir. But the money — I was supposed to get money for my part in it.

Q. So you would get money but there was — he didn't say 10 thousand or 10 million but that you would get your cut. Do you remember what his conversation was?

A. Just that, you know, we would divide the money.

Q. What was your response then now after he came to your offices?

A. I told him I would still have to think about it.

Q. Do you know how long you all stayed together on that occasion?

A. I imagine, Mr. Rish, about 10 minutes, I imagine.

Q. All right. Do you remember seeing Judge Smith any more after you saw him there on the first of August, around the first of August, do you remember anything, any further contacts about this with Judge Smith?

A. I believe it was the next week that I saw him in the hall at the Suwannee County Courthouse.

Q. What, if anything, took place there?

A. He asked me had I given it any more thought.

Q. What did you tell him?

A. I told him I was still thinking about it.

Q. All right, sir. Did you contact anybody else as a result of these contacts you had with Judge Smith? Did you talk any

further to the FBI or FDCLE or the State's Attorney or anybody?

A. Well, I would say Mr. Ramsey; when I would see him I would tell him what took place.

Q. Did you tell him about your meeting in the hall and in your office with Sam Smith?

A. Yes, sir, I told him about the hall.

Q. Do you remember how long it was after you met Sam Smith in the hall and talked to him before you saw Ramsey or anybody and related this to them?

A. No, sir.

Q. Do you think it was probably in August?

A. Yes, sir.

Q. Could you estimate about when in August or you just can't remember?

A. It would strictly be a guess, Mr. Rish, and I would say it was probably around the middle of August or somewhere. I don't have any idea.

Q. All right. Did you and Agent Ramsey plan any course of action at that time when you talked or do you recall?

A. At that time?

Q. Yes, sir.

A. No, sir.

Q. During the first part of September did you have an occasion to seize a large amount of marijuana?

A. Yes, sir.

Q. When was that?

A. It would have been the 3rd of September.

Q. How much was it?

A. 5,000 pounds.

Q. Where was it seized?

A. On Interstate 10 at the inspection station.

Q. What did you do with that marijuana?

A. I turned it over to the FDCLE.

Q. How long did you keep it before you turned it over to the FDCLE?

A. From the time I could drive the truck from the inspection station to the Suwannee County Jail. Just a short period of time.

Q. Then they picked it up there?

A. Yes, sir.

Q. The same day?

A. Yes, sir.

Q. Did that 5,000 pounds ever return to Live Oak?

A. No, sir.

Q. Do you know what happened to it?

A. If you ask me do I know I think it was burnt but I couldn't swear to that.

Q. Is it your understanding it was destroyed by the law enforcement people?

A. Yes, sir, it was destroyed.

Q. I believe you mentioned that the election was in September that you were running in; is that right?

A. Yes, sir.

Q. What day in September; do you remember?

A. September 7.

Q. What was your margin of victory — how many opponents did you have?

A. Three.

Q. Who did you have to run it off with?

A. I didn't have to run it off.

Q. You won the first primary?

A. Yes, sir.

Q. Who were your opponents?

A. Mr. Cecil Bonds, Mr. Donald Boyette, Mr. Ed Rewis.

Q. Were any of those kin to Poss Lee?

A. Mr. Cecil Bonds was.

Q. On or about September the 9th, did you have an occasion to see Mr. Ramsey again?

A. On the 9th of September?

Q. Yes, sir.

A. Yes, sir.

Q. Did you attempt to contact Judge Smith?

A. Yes, sir.

Q. What was the purpose of that contact?

A. To tell him I had changed my mind and wanted to talk to him.

Q. Did you make contact with him?

A. Yes, sir.

Q. Who recorded it?

A. Agent Ramsey.

Q. All right.

REPRESENTATIVE RISH: Judge, I believe that these are all covered by the stipulation. Mr. Cacciatore, are these covered by—all of these, I believe, are in our stipulations, our consent to record?

MR. CACCIATORE: I'm sorry. I was conferring with my counsel.

REPRESENTATIVE RISH: These are certified copies of the consent to record signed by Sheriff Leonard and we're going to put those in now if we can. These two consents were on 9/10 and 11/16. We wanted you to examine these, if you would, and look at them.

MR. CACCIATORE: Sure.

JUSTICE ENGLAND: Mr. Rish, would you describe them for the Senate again, please, before you hand them to the Secretary.

REPRESENTATIVE RISH: Judge, one of them is dated 9/10/76 and it's signed by Robert Leonard and what it is is

giving a special agent his permission to record his conversation. The other one is the same thing only it's a different date to record those.

JUSTICE ENGLAND: All right.

CONTINUED EXAMINATION

BY REPRESENTATIVE RISH:

Q. As a result of the contact with Mr. — you say you did contact Judge Smith?

A. Yes, sir.

Q. As a result of contacting him—just go ahead and look at those documents and tell us if that's your signature and if those are proper copies and let the Secretary have it.

A. Yes, sir.

Q. Here is the next one also so you can look at it while we have them.

A. Yes, sir.

(Witness identifies documents.)

Q. As a result now of the contact with Judge Smith, what did you do?

A. I went over the next day to his house.

Q. Did you have occasion to see Agent Ramsey again?

A. I met with Agent Ramsey and Agent Kirk that morning of the 10th.

Q. What happened at that time?

A. They put a body recorder on me.

Q. All right. And that was—was that pursuant to the introduction, the consents that we just put into evidence there?

A. Yes, sir.

Q. They did that pursuant to your authorization; is that correct?

A. Yes, sir.

Q. All right.

REPRESENTATIVE RISH: We would like as an aid to the tapes that we are going to play, Judge, if we could distribute the transcripts of those tapes.

JUSTICE ENGLAND: It has already been approved, Mr. Rish.

REPRESENTATIVE RISH: All right, sir.

JUSTICE ENGLAND: Mr. Brown, can you assist in the distribution?

(Whereupon Managers' Exhibit 7 for identification, a transcript of the taped conversation between Sheriff Robert Leonard and Judge Samuel S. Smith on September 10, 1976, was distributed.)

REPRESENTATIVE RISH: Judge, it's my understanding that the order was that this would be an aid to the Senate and in understanding what was happening. The certification of the Clerk is on these. We will be starting the first tape on Page 3 of the transcript and when we are through with these we will pick these back up and they will not officially go in but they will be just used as an aid like a blackboard.

JUSTICE ENGLAND: I think you can proceed, Mr. Rish.

REPRESENTATIVE RISH: All right.

(Short pause.)

JUSTICE ENGLAND: Senator Wilson.

SENATOR WILSON: A clarification of what Mr. Rish just said that these would be used as an aid to follow the tape. But what is the purpose of picking these back up before this trial is concluded?

REPRESENTATIVE RISH: Well, Senator Wilson—

SENATOR WILSON: If we have got them and we are going to be following them and if we are going to be reviewing our own notes or making notes on the margins for any inquiry I just wonder why we can't as Senators keep them as aids or tools until we are through.

REPRESENTATIVE RISH: Senator Wilson, they were to be used as aids in further understanding the tape in case—so you could follow along—if you didn't fully understand it. We have no objection to you keeping them but it's just exactly like a blackboard or something that you would place an X-ray and I believe that opposing Counsel might want to comment on that. We don't have any objection to it.

SENATOR WILSON: Well, I would object to opposing counsel taking my copy away if we get to that point. Okay. I will serve notice on him that I am going to be taking notes if necessary.

REPRESENTATIVE RISH: All right. Let the record so reflect.

MR. CACCIATORE: If I may, Mr. Chief Justice.

JUSTICE ENGLAND: Mr. Cacciatore.

MR. CACCIATORE: Let me explain to the Senate that it's not my intent to take anything away from any of the Senators. I want to start by saying that. As the Court knows I have objected to this whole procedure and I thought that this might be one of the problems we would be facing. And if the Senate members keep these transcripts and even though the Board of Managers fails to introduce these transcripts into evidence I want the record to be clear that by the Senators keeping these transcripts they're in effect in evidence and I want the record to be clear on that. That's all.

JUSTICE ENGLAND: Senators, just to call your attention again to the order which I entered which is in your Desk Book, anticipating that this would come up, the House indicated they did not intend to move the transcripts into evidence because they have got the original tape which is the best evidence, which you will hear. But the House Managers felt and asked if I would approve the written transcript in front of you so that you could follow in those areas where it was unclear on the tape or if there was any difficulty with the sound system. But if you read my ruling you will find that the transcripts themselves would be admissible and in the event we come to that point and the Senators wish to keep them it may be that the House Managers will want to move them into evidence. That probably will not be necessary because as I understand it, it's simply to allow you to follow and the evidence being offered is the taped transcription, the oral words. Obviously you could make notes. I have given permission for notes. You could make notes of the recorded conversations as you go along and anything you wrote down could obviously be kept. So I don't think we have to cross that bridge yet until we see what happens.

Mr. Rish, you can continue.

REPRESENTATIVE RISH: We are going to ask Sheriff Leonard if he would stay right where he is and at this time, Your Honor, we are going to ask Agent Kirk if he would play the tapes and I'm going to again remind you that the tapes start on Page 3 of the transcript. If you will turn to Page 3 of the first recording which is made on 9/10.

(Whereupon, the taped conversation between Sheriff Leonard and Judge Samuel Smith was played to the entire Senate.)

(The following conversation between Sheriff Leonard and Judge Samuel Smith is being typed directly from a transcript of the conversation furnished by the House Board of Managers.)

SHERIFF LEONARD: "Hey Judge.

JUDGE SMITH: Hello Robert.

SHERIFF LEONARD: How you been?

JUDGE SMITH: All right. Congratulations again.

SHERIFF LEONARD: Yes. You ain't uh, where you fixing to go on vacation?

JUDGE SMITH: No, we're going down to the football game this week.

SHERIFF LEONARD: That's right, they start again don't they?

JUDGE SMITH: Yea. Florida (inaudible)

SHERIFF LEONARD: Uh, how's Florida gonna do this year?

JUDGE SMITH: They always lose one ball game they're supposed to win. They'll probably (inaudible) send in one. Well, that's about the way it always is.

SHERIFF LEONARD: Yea.

JUDGE SMITH: They'll, they'll lose one ball game they're supposed to win, but uh, they got plenty of talent down there, plenty of depth I mean.

SHERIFF LEONARD: They've got the best talent they've had in a long time down there.

JUDGE SMITH: Well they've got uh, they've got three outstanding quarterbacks and running backs coming out of their ears.

SHERIFF LEONARD: Well they needed some running backs, now I wanna tell you they.

JUDGE SMITH: Uh, that Jimmy, Jimmy, Jimmy Dubose they had last year, that fullback, he's gonna be hard to replace.

SHERIFF LEONARD: But they needed some running backs down there, I swear.

JUDGE SMITH: Well they've got some speed in that backfield this year.

SHERIFF LEONARD: Well they needed 'em, they, they, seem like to me here lately they've been concentrating on too much, they either wide receiver or they're concentrating on one and then let one go lacking.

JUDGE SMITH: Well what they got to do is, they got, them two ball games they had lost last year they should have won, both the Georgia game and the NC state game. They threw an eight-man line against them and they didn't expect that, they didn't know how to adjust to it. Wishbone when it's an eight-man line you can't do it.

SHERIFF LEONARD: Well, you.

JUDGE SMITH: You got to throw the ball then.

SHERIFF LEONARD: You know Doug Dickey, course I know it's gonna take him a while to get his recruiting program like it should be.

JUDGE SMITH: Yea.

SHERIFF LEONARD: But uh, we got uh, I don't know which one it is.

(Static and talking in background—go ahead seven.)

JUDGE SMITH: Were you surprised that you beat them all in the first primary?

SHERIFF LEONARD: Yes, sir. Yes it did.

(Talking in background—inaudible)

JUDGE SMITH: Well from what I, people I talked to, they, they should know what they're talking about, they said you had a, a good chance, but they felt pretty sure they'd be a second race.

SHERIFF LEONARD: Well I, I thought, I thought it'd be a runoff between me and Rewis.

JUDGE SMITH: Right.

SHERIFF LEONARD: Now towards the last I begin to hear a lot of Boyette and I said well.

JUDGE SMITH: How'd he do by the way, I didn't see it?

SHERIFF LEONARD: He got 800 and something votes, Cecil got 500 and Ed got 1505 I believe, I believe that's the way it turned out Judge. All the ones I, I kept tallying, I run a tally on all of them because I.

JUDGE SMITH: Yea.

SHERIFF LEONARD: You know when I saw that it, it could come out by the runoff, I all I kept was a running tally.

JUDGE SMITH: That's a bad time of night, isn't it?

SHERIFF LEONARD: Well I like these voting machines, it doesn't take long to get them.

JUDGE SMITH: That's right, but man when we used to have paper ballots, my God, when I ran that first time (inaudible).

SHERIFF LEONARD: They, they'd been on up the next day.

JUDGE SMITH: Oh.

SHERIFF LEONARD: Before you could have 'em.

JUDGE SMITH: Matter of fact, I didn't know that I had, had, had, uh, I felt like I had won. But the absentee votes could have turned it the other way.

SHERIFF LEONARD: Well I was just watching that uh, Fuqua race this time, you know, that, it went right on down to the wire and I don't know, I still don't know for sure how it came out. Fuqua says he, his campaign quarters, headquarters said they had enough to win.

JUDGE SMITH: Well.

SHERIFF LEONARD: By the runoff and then some of them said he hadn't, so. But I can imagine when you run in a big race like that, you know, where them absentees come in from all over.

JUDGE SMITH: Ohh boy. He's got some district to run in.

SHERIFF LEONARD: Um.

JUDGE SMITH: I wouldn't want to do that. These seven counties are bad enough.

SHERIFF LEONARD: I don't see how they, I don't see how they can get over it, Judge, there's.

JUDGE SMITH: No.

SHERIFF LEONARD: There's no way.

JUDGE SMITH: You know when I ran that statewide race, I, I was a fool to even run in that thing uh, looking back at it now, I really didn't want that damn job, on the Supreme Court. I wouldn't have enjoyed the work, nor (inaudible) you're away from the people. It doesn't pay but \$4,000 more than I'm making with the job I got now, so I, and I couldn't sell my home here and move to Tallahassee.

SHERIFF LEONARD: Well wouldn't want to.

JUDGE SMITH: It's ridiculous.

SHERIFF LEONARD: Wouldn't want to anyhow, would you?

JUDGE SMITH: No. My wife's got a good job here in Lake City as, Director of El, Elementary Education in the county and I'd got to be a fool to go, I've got too many friends in this area, in this area to, pick up and move.

SHERIFF LEONARD: But uh, I, I just don't see, Judge, how a man can run statewide and come out, you know.

JUDGE SMITH: Well, I'll tell you what happened to me, when I closed my campaign down, I found out I had, I had to borrow \$35,000 to pay off my campaign debts, and I'm still paying interest on it.

SHERIFF LEONARD: Judge, and, once you lose, don't nobody step forward either, do they?

JUDGE SMITH: Oh no, no sir. You know a lot of them encourage you to run and get you in there, and then when you go around to see them later about some campaign contributions they're hard to find.

SHERIFF LEONARD: That (inaudible)

JUDGE SMITH: They got you in it and then you got to swing yourself.

SHERIFF LEONARD: Well, that's the way a lot of these local races you know, Judge, I see them talking and I've heard them laugh about, well talk old so and so into running.

JUDGE SMITH: Yea, just to beat him (laugh)

SHERIFF LEONARD: I had a Chief Deputy they did that to.

JUDGE SMITH: Knowing that he doesn't have a chance.

SHERIFF LEONARD: Knew he didn't have a chance. The day he ran I knew he didn't have a chance.

JUDGE SMITH: Yea.

SHERIFF LEONARD: 'Cause I've heard people laugh, you know they and some of those same ones that had come to me and told me, said, fire him, get rid of him. Yet, uh, they went to him and talked him into running.

JUDGE SMITH: I was, I was really shocked and surprised when I heard that Cecil was gonna run.

SHERIFF LEONARD: Well, it'll, like I say, lot of those people I know that was telling me to fire him and was going to Cecil and telling him to run and you know, I knew what was up, they was, they was gonna get rid of him one way or the other.

JUDGE SMITH: Yea.

SHERIFF LEONARD: And when he came out then a lot of 'em said well, you know he's out now.

JUDGE SMITH: (Laugh)

SHERIFF LEONARD: We're gonna show him how to beat him. Well, I'll tell you one, uh got another good one. There's Boyette. I heard a lot of people, you know, was encouraging him and, and laughing behind his back all the time, that they was gonna beat him.

JUDGE SMITH: Well, I, I knew he didn't have, not a prayer. He didn't have a prayer, but well what surprised me is that Drury, Drury could have kept him from running.

SHERIFF LEONARD: Well, Judge, he, he could have but, I don't think he wanted to, Boyette was a fool.

JUDGE SMITH: He'll go right back into the same job he had, won't he?

SHERIFF LEONARD: Well I don't know now Judge, let me ask you something. I figured he, he might and then I guess it all depends on how much, how bad Judge Drury's gonna run next time. But, I'd think a long time now before I hired a bailiff out of a county that didn't draw but 800 votes. I could see right then, if he couldn't draw but 800 for him, how many could he draw for me?

JUDGE SMITH: The only problem is this, people, the people who voted for you and your friends are gonna figure that Drury could.

SHERIFF LEONARD: Put him up to run.

JUDGE SMITH: Put him up to run.

SHERIFF LEONARD: Right.

JUDGE SMITH: And, and, if I was standing after ya, said go in and run, if you lose, I'll give you your job back.

SHERIFF LEONARD: Well and so it don't hurt him.

JUDGE SMITH: I damned if I'd hire him.

SHERIFF LEONARD: Well.

JUDGE SMITH: If my, my bailiff told me he was gonna run, I say, well, if, if you got to run, I can't stop you cause when you get the fever you're gonna run. But if you run, you're through. You won't come back here.

SHERIFF LEONARD: But uh, I, I couldn't, I couldn't see it, I, I don't know, I, I think that Judge didn't discourage him, but I can't see the point in doing it, I'd rather, you know, until you run, you can always say well, I've got so many friends here, but the minute you run and you don't have them, then it ain't, it ain't no telling this.

JUDGE SMITH: You know Drury had opposition he doesn't want uh, he didn't want to hire Boyette back.

SHERIFF LEONARD: Well, I've heard Judge Drury wasn't gonna run, I, I, you know, that's, that's nothing definite, I, you know, that's just grapevine talk I've heard that, but I don't, I can't see him.

JUDGE SMITH: Well I think he's a little disappointed in, in having to live on that pay, he was making a lot more money than he's making now, in law practice.

SHERIFF LEONARD: Well, that, that's probably, that's probably true. But uh, Judge, the way I look at it, you know, I, I know some of these attorneys are good law case, and

they, they'll probably make more in one good lawsuit than they would two years' salary.

JUDGE SMITH: Why sure.

SHERIFF LEONARD: But you know, one hand in the bush is worth.

JUDGE SMITH: Well, I make \$36,000 a year and I've been in this business since 1932. And my son over in Perry that was with Byron Butler before Byron died the other day.

SHERIFF LEONARD: Did he die?

JUDGE SMITH: Yea.

SHERIFF LEONARD: I'd actually, now that was a good man.

JUDGE SMITH: He's one of the finest, he's the finest friend I ever had I believe.

SHERIFF LEONARD: He's a good man. Everyone in Taylor County spoke highly of that man.

JUDGE SMITH: He's the most popular man in Taylor County, I tell you that.

SHERIFF LEONARD: He would have, I tell you what, he could have gave somebody a run for a circuit judge seat.

JUDGE SMITH: Oh good God, if he had announced, nobody would have run against him.

SHERIFF LEONARD: He would have, he would have gave anyone a, a run.

JUDGE SMITH: And he would have made a good one too. But uh, Michael made more money last year than I made and he's in just his third year of law practice.

SHERIFF LEONARD: Well.

JUDGE SMITH: And a lot had to do with Byron Butler, you know, whose got all the practice over there.

SHERIFF LEONARD: Well, that's about the only attorney over there really isn't it? With, with any name.

JUDGE SMITH: (Inaudible) Don Dansburn and John Weed and Conrad Bishop and.

SHERIFF LEONARD: Well.

JUDGE SMITH: They don't know how to, find their way to the court house.

SHERIFF LEONARD: Well really. I'm talking about someone that knows how to get around.

JUDGE SMITH: By, Byron had all the business over there. I hope Michael get ahold of enough of it to.

SHERIFF LEONARD: Well, he probably had, he probably, you know, that name's gonna carry it a while.

JUDGE SMITH: Right.

SHERIFF LEONARD: Until he can get his feet on the ground.

JUDGE SMITH: Well, he's gonna be able to keep the two banks over there and they uh, Perry Federal and he's got two—three other good accounts he'll be able to keep. Just those banking institutions alone aren't enough to keep a man in law practice.

SHERIFF LEONARD: Well, I, I never realized that until here, last couple of years (inaudible).

(Talking in background—inaudible).

SHERIFF LEONARD: But the bank need a lawyer.

JUDGE SMITH: Why sure, well you got a base at it, to begin with, you, somebody goes to the bank to borrow some money (inaudible)

(Talking in background—inaudible)

JUDGE SMITH: Approves his loans for him (inaudible)

(Talking in background—inaudible)

JUDGE SMITH: Legal business, well they go back to the same lawyer.

SHERIFF LEONARD: Right.

JUDGE SMITH: (Inaudible)

(Talking in background—inaudible)

SHERIFF LEONARD: But if they, well, not only that, you know, you'd be, it surprised me, Judge, how many

(Talking in background—inaudible)

SHERIFF LEONARD: Peoples go to a, to a bank, you know that's a lot of people that's, especially farmers, that's all they know is a bank.

JUDGE SMITH: Uh, uh.

SHERIFF LEONARD: Well they'll go to the bank that'll ask you.

JUDGE SMITH: Yea, what one are you using. What.

SHERIFF LEONARD: Yea.

JUDGE SMITH: Would you recommend for this problem (Inaudible).

SHERIFF LEONARD: Well and most of them borrowing money, then you know, they know which attorney, like uh, you ask a lot of them, say, have you got an attorney, yes, and some of them says he does all my business, but what he's doing, he's working for the bank and he's but that's the one he knows, that's the one he deals with so it draws a lot of business.

JUDGE SMITH: Sure it does. You've given some more thought to our talk the other day?

SHERIFF LEONARD: Yes, sir. And, Judge, I've got about fifteen hundred pounds and, and I'll let five hundred pounds go, that'll give me some I can, people can see destroyed.

JUDGE SMITH: Uh hum.

SHERIFF LEONARD: And uh, and I, what do you think about that? I think I need to keep some where people can see it destroyed.

JUDGE SMITH: Yea. Well of course, the return money wise, would, would be geared directly to the poundage that you could let go.

SHERIFF LEONARD: Well. Judge I know that, but you know these newspapers they keep up with it pretty close, you know.

JUDGE SMITH: Oh yea.

SHERIFF LEONARD: On them deal.

JUDGE SMITH: Right.

SHERIFF LEONARD: And uh, you know we got 5,000 pounds the other day, that it went to the lab and it come back.

JUDGE SMITH: Five thousand pounds? Over 5,000 pounds. It was 5,300 and something pounds of it.

JUDGE SMITH: Where is it now?

SHERIFF LEONARD: It's at the lab, they were fingerprinting some sacks and it'll come back over here.

JUDGE SMITH: God almighty. Good God Almighty. Five thousand pounds.

SHERIFF LEONARD: Well Judge, uh how would we work it, now I Poss I don't, I don't know about him, now of course I know why he went with Cecil, that's kinfolks, I. How good do you trust him?

JUDGE SMITH: All the way.

SHERIFF LEONARD: Well.

JUDGE SMITH: If I didn't, I wouldn't mess with him, this is, this is too important to me, Robert.

SHERIFF LEONARD: Yea.

JUDGE SMITH: And I know it is to you too.

SHERIFF LEONARD: Yes, sir.

JUDGE SMITH: Cause I've, I've worked too damn hard and too long and done without a hell of a long time to, to even take a chance on a slipup anywhere.

SHERIFF LEONARD: Well, Judge, how much would I get out of 500 pounds?

JUDGE SMITH: Well I haven't talked to that man, about the market, since I talked to you last, but if the market's still about like it was then, we ought to realize \$150,000 out of it.

SHERIFF LEONARD: Well it, it's good stuff most of it. So, is that Colombia and you know it's.

JUDGE SMITH: Well, I said, he told me he said uh, if it'll average out good you'll have some bad and some.

SHERIFF LEONARD: Yea.

JUDGE SMITH: Excellent, and it'll probably average out that there's a, we could, well I could probably average out about \$300 a pound for you.

SHERIFF LEONARD: What, what, what you gonna do, send, spend the whole weekend down there, Judge?

JUDGE SMITH: Yea.

SHERIFF LEONARD: When would be the best time to, and what I'd like for you to do, Judge, is, whoever you send after it, bring the order with 'em. Then that-a-way I know, I know what I'm doing.

JUDGE SMITH: All right.

SHERIFF LEONARD: But I need to know now, you know, but I'd like it to be on a midnight shift at the jail.

JUDGE SMITH: All right. Well, who, who's gonna be there?

SHERIFF LEONARD: I'll, I'll be there.

JUDGE SMITH: Anybody else?

SHERIFF LEONARD: No.

JUDGE SMITH: Okay.

SHERIFF LEONARD: And I'll make sure that the trusties is all locked up and I'll take that midnight shift.

JUDGE SMITH: Okay.

SHERIFF LEONARD: And I because uh, you know, they always, I can always work and say uh, it'd be hard for me to tell the midnight man well I'll just work for you, but I can always get a day man to do something and tell the midnight man, will you, what about working this shift, 'cause I got something I want him to do.

JUDGE SMITH: All right.

SHERIFF LEONARD: And I'll, and I'll cover for you.

JUDGE SMITH: Okay, let, let's, let's do this uh, I'll uh, I'm going to Tampa, and the man I want to talk to lives in Sarasota and while I'm down there I'll call him and uh, arrange, what uh, how, how bulky is 500 pounds of that stuff?

SHERIFF LEONARD: Um.

JUDGE SMITH: What would you need to haul it in?

SHERIFF LEONARD: A big car trunk would hold it, cause uh, I can give you some in blocks, and it, you know, it's pressed good. Now the rest of it's in bags, but you can still get, and Judge when I say 500 pounds, now, it'll be as close to 500.

JUDGE SMITH: (Talking to someone in background - Yea.)

SHERIFF LEONARD: Uh Judge, just give me a call when you get back, let me know something.

JUDGE SMITH: Okay. Let's think about this 5,000 pounds, I, understand it if, if we can get a lick like 2,000 pounds, by God they can take this job I've got and go with it. You can do the same thing, because my God, you've got enough money to live on the rest of your life. And you, and I can handle 2,000 pounds as just as easy as I can 500.

SHERIFF LEONARD: Okay, it's over at the lab now and it's supposed to be back.

JUDGE SMITH: Okay.

SHERIFF LEONARD: And it's on a, it's on a U-Haul It truck.

JUDGE SMITH: Well, we can arrange a, what I think would be the best thing to do is, is go buy one of these things, haul it in that. 'Cause they don't, they never, never stop these things, for anything.

SHERIFF LEONARD: Well, if it's going south, Judge, you ain't got no worry.

JUDGE SMITH: Well, it's going south.

SHERIFF LEONARD: Well, if it's going south, you haven't got any worry, 'cause, you know, there's nowhere to stop.

JUDGE SMITH: Well, well, the man that I'm gonna deal with I trust implicitly and he trust me and all I'd have to do is put it in something like this and take it out here to Arrowhead or somewhere and park it and give him a set of the keys, then you lock it up and he'd come by and give me the money and go out there and pick it up and go on with it.

SHERIFF LEONARD: But on that, a trunk of a big car, now you know, a regular, it'd haul it. Now if you got a camper, it'd be better, but if you think, a good size car.

JUDGE SMITH: Well 500 pounds, I'm gonna put it in the car, but you talking, if you're talking about 2,000 pounds

or more, I'd go buy, go buy one of these things and, and give him the camper and all.

SHERIFF LEONARD: Yea.

JUDGE SMITH: When I got the money, 'cause, my God, I can get one of those for \$12,000.

SHERIFF LEONARD: Yea.

JUDGE SMITH: Hell, you're talking about over a half million dollars, 2,000 pounds.

SHERIFF LEONARD: Right.

JUDGE SMITH: So just give him the key to that and say go pick it up at that Arrowhead and goodbye.

SHERIFF LEONARD: But, give me a call now, Judge, and let me know, you know, where I can get one. Get it worked out now.

JUDGE SMITH: Well, how soon could you get it?

SHERIFF LEONARD: Well, any night next week, except Monday. Now Monday'd be a hard one 'cause I'd have to work my jailers around to where I can get uh, I can give them something to do, and where I can get them off too.

JUDGE SMITH: Well you, you can. I don't guess you got any way to weigh it so I know how I was delivering to him. 'Cause I, I want him to hand me the money when I hand it to him.

SHERIFF LEONARD: Yea, I can weigh it.

JUDGE SMITH: Okay.

SHERIFF LEONARD: I can have it weighed out.

JUDGE SMITH: Okay. Just so it's 500 pounds, just so he'll know (Inaudible).

SHERIFF LEONARD: Well, I, I won't split no sacks, I'll tell you as close to.

JUDGE SMITH: I'll call you when I get back.

SHERIFF LEONARD: Okay."

REPRESENTATIVE RISH: If it please the court we would like to continue the examination of Sheriff Leonard.

JUSTICE ENGLAND: You may proceed.

CONTINUED DIRECT EXAMINATION BY REPRESENTATIVE RISH:

Q. Sheriff, the tape that you just heard on September the 10th, 1976, was that Respondent Smith's voice on it?

A. Yes, sir.

Q. Was your voice on it, the other voice?

A. Yes, sir.

Q. Where did the conversation take place?

A. In my car in the driveway of Judge Smith's home.

Q. All right.

REPRESENTATIVE RISH: Judge, I would like to offer into evidence at this time Managers' Exhibit No. 11 which is a copy of the tape which we just played.

JUSTICE ENGLAND: It will be so received.

BY REPRESENTATIVE RISH:

Q. You said in your car at Judge Smith's home?

A. Yes, sir.

Q. We heard a number of background noises there that sounded like a radio; what was that?

A. That's what it was, a radio.

Q. Was it your radio?

A. Yes, sir.

Q. A police radio?

A. Yes, sir.

Q. The conversation that we just heard on that tape, was that the same conversation that you had on September the 10th, 1976, with Samuel Smith?

A. Yes, sir.

Q. Do you have a copy of that transcript, Sheriff Leonard?

A. Yes, sir.

Q. Would you turn to Page 17 and 18 there, please, sir?

A. (Witness examines document.)

Q. Sheriff, in the discussion there concerning the 5,000 pounds, when that discussion took place, how did the Respondent Sam Smith act?

A. His voice changed, goose pimples popped up on his arm.

Q. Was that 5,000 what you had picked up earlier in September?

A. Yes, sir.

Q. That's what you were making reference to at that time?

A. Yes, sir.

Q. All right. On page 18 there was a mention of Cecil, who is that referring to?

A. Mr. Cecil Bond.

Q. Is that one of your opponents in the race?

A. Yes, sir.

Q. How about Poss Lee or Poss there, who does that refer to?

A. That would be Poss Lee.

Q. Poss Lee. On the bottom of Page 19 where you referred to bring the order with him, what order are you talking about there?

A. The destruction order.

Q. On Page 22 Respondent Smith refers to a man he is going to deal with and says that he trusts him implicitly; do you have any idea who that man was?

A. No, sir.

Q. Do you to this day?

A. No, sir.

Q. On September the 10th after the conversation with Respondent Smith what did you do?

A. I went back to the office—the Holiday Inn and met Agent Kirk and Agent Ramsey.

Q. What happened at that time?

A. They took the body recorder off of me.

Q. Over that weekend did you have any further contact with Judge Smith?

A. No, sir.

Q. Did you have any the following week, did you have any contacts with Poss Lee?

A. Yes, sir.

Q. Where was that?

A. In the parking lot behind the Suwannee County Jail.

Q. Is that the jail that you run in your county?

A. Yes, sir.

Q. About what time was that?

A. It was about dusk dark.

Q. About dusk dark?

A. Yes, sir. Just before dusk dark.

Q. Tell us how that confrontation or that conversation took place?

A. Poss drove up in his truck and he had a piece of paper rolled up in his hand (indicating) and said he had the order.

Q. Did he say anything about the order other than he just had the order?

A. No, sir.

Q. Did he describe it?

A. No, sir.

Q. What did you say to him?

A. I told him I wasn't going to do it.

Q. What happened then, what was his response?

A. He said you should catch them all.

Q. What was your reaction to that?

A. Nothing. We separated.

Q. Have you talked with Mr. Lee since you saw him back there in August?

A. Pardon me?

Q. Have you talked to Mr. Lee since that time? Have you talked to him since you saw him in August other than on that one occasion?

A. Mr. Rish, let me get this straight—

Q. Excuse me—about the marijuana. I know you saw him from time to time, I believe you said.

A. No, sir.

Q. After you had seen Sam Smith on the 10th, I believe you then saw Poss Lee on the 15th. Did you talk with him about the marijuana on that occasion?

A. On the 15th, that's what happened.

Q. Sir?

A. On the 15th, yes, sir, I saw him.

Q. Did you talk to Smith between the 10th and 15th of September, that you recall?

A. No, sir.

Q. Did he try to contact you after the 15th?

A. Yes, sir.

Q. Did he contact you?

A. No, sir. Mr. Rish, if you ask me did he contact me—

Q. Personally.

A. At that time then?

Q. Yes, sir.

A. No, sir.

Q. What makes you say that he tried to contact you?

A. The office called me and told me that Judge Smith had called.

Q. After that time did you have an occasion, after seeing Poss Lee on the 15th, did you have an occasion to see a Mr. Duke McCallister?

A. Yes, sir.

Q. When was that?

A. That would have been on the 17th of September.

Q. Do you know what day of the week that was?

A. Yes, sir. That would have been on a Friday.

Q. Where did you see him that day?

A. In Mr. Duke's home.

Q. Did you have any conversation with Respondent Smith or with Poss Lee after that conversation that you had with Mr. Duke McCallister with regard to the marijuana?

A. Mr. Rish, I don't understand what you are asking me. You mean, in that short time—if you will give me a time span.

Q. All right. Okay. You had seen or had contact with them on the 15th. Between the 15th and the 17th, let's say, when you saw Duke McCallister, did you have contact with Smith or Poss Lee between those two times?

A. No, sir.

Q. On the afternoon of September 17th, did you have an occasion to see Special Agent Baldwin or Ramsey with the FBI?

A. Yes, sir.

Q. Were there any plans made at that time to go forward regarding your conversation with Sam Smith?

A. Yes, sir.

Q. What were those plans? What was the manner of the plans, the matter of fact or whatever you want to call it?

A. That we would load some marijuana at Suwannee County Jail and bring it to Tallahassee, put it on a truck and bring it back to Live Oak and park it in the parking lot.

Q. On the 22nd of September, did you contact Respondent Smith by phone on that day?

A. Yes, sir.

Q. Sheriff Leonard, why did you contact him then?

A. Because they told me that the office said he had been through the day before, had stopped by the office to see me.

REPRESENTATIVE RISH: Judge, did you want to take a break during the afternoon? I didn't know. I thought somebody said you were going to break about 3:00 or 3:30. This man, we're going to have him on for a while yet. This is our longest witness.

JUSTICE ENGLAND: Is that a convenient time to do that?

REPRESENTATIVE RISH: It might well be.

JUSTICE ENGLAND: Why don't we take a break and return at about 3:20, ten minutes break.

The Senate recessed at 3:10 p.m. and was called to order at 3:25 p.m. A quorum present—35:

Barron	Gordon	Myers	Thomas, Jon
Brantley	Gorman	Peterson	Thomas, Pat
Chamberlin	Graham	Plante	Tobiassen
Childers, Don	Hair	Poston	Trask
Childers, W. D.	Henderson	Renick	Vogt
Dunn	Holloway	Scarborough	Ware
Firestone	Johnston	Scott	Williamson
Gallen	Lewis	Skinner	Wilson
Glisson	McClain	Spicola	

JUSTICE ENGLAND: Senators, if you will take your seats. Mr. Rish, we are ready to resume.

BY REPRESENTATIVE RISH:

Q. Sheriff Leonard, did you contact Sam Smith on September 22nd?

A. Yes, sir.

Q. What was the nature of that contact?

A. The office told me he came by on the 21st.

Q. Did you get in touch with him?

A. Yes, sir.

Q. What did you tell him?

A. I asked him what he wanted and he said it wasn't nothing, he was just through town on his way to Perry.

Q. You testified that you brought some marijuana in and parked it, which I assume you thought somebody might contact you about it. Did you leave a truck parked at your jail with marijuana on it?

A. It was parked south of the jail in a parking lot.

Q. How much marijuana was on it?

A. The best I recall, seems like it was about 1500 pounds. I couldn't swear to that.

Q. What was the purpose of that?

A. To see if someone would try to come get that marijuana.

Q. You had it staked out?

A. Yes, sir.

Q. Did any one try to get it?

A. No, sir.

Q. Where did you say you got that from?

A. Out of the Suwannee County Jail.

Q. And you went to Tallahassee and came back with it?

A. I brought it to Tallahassee and FDLE or FBI one, I don't know which one brought it back to Live Oak.

Q. Where had it come from originally?

A. I imagine most of it had been caught at one of the inspection stations.

Q. Had you confiscated it in your jail, in your department there?

A. Yes, sir.

Q. You think it was from one of the inspection stations?

A. I would think so, yes, sir.

Q. During November now, we are going on into November, did you continue the investigation with the FBI?

A. Yes, sir.

Q. Did you have further discussion about marijuana with the FBI?

A. Yes, sir.

Q. What was going to happen? What was your plan?

A. That an FBI agent would bring a load of marijuana to the inspection station at I-10.

Q. What was the purpose of that?

A. To get some marijuana back into Suwannee.

Q. In your possession?

A. Yes, sir.

Q. Was that in connection with the Smith investigation?

A. Yes, sir.

Q. On November 15th, did you have a conversation with Judge Smith?

A. Yes, sir.

Q. What did you do that morning after your attempt?

A. After I attempted to get him, I went to the inspection station.

Q. What did you do there?

A. Picked up the FBI agent and a load of marijuana.

Q. Did anybody know who it was? Did you arrest the man?

A. Yes, sir.

Q. Where did you carry him?

A. To the Suwannee County Jail.

Mr. Rish, pardon me just a second. I think I told you something. You asked me did I have a conversation with Judge Smith.

Q. Yes.

A. And I didn't.

Q. Did you try to contact him?

A. I tried to contact him, yes, sir.

Q. But didn't succeed?

A. No, sir.

Q. Why did you go out to the inspection station?

A. Because the Public Service Commission was working there that day. And they had stopped a truck. And they said they wouldn't open the door and let them look in it.

Q. Did you go out there personally?

A. Yes, sir.

Q. What happened when you got out there? Answer.

A. They had a fellow stopped in a rental truck. I cut the lock off the door and took the truck and the fellow to the Suwannee County Jail.

Q. Who was he?

A. Dennis Durden.

Q. Was that the name he was going by then?

A. No, sir. He was going under the name then of Dennis McGee.

Q. Did you expect him to be there?

A. Yes, sir.

Q. You knew who it was when you got there? You knew it was an FBI agent?

A. I didn't know it. When I got there it was. But I figured it was.

Q. You had been part of the plan for one to come through?

A. Yes, sir.

Q. After that did you attempt to contact Respondent Smith?

A. Yes, sir.

Q. Did you make contact?

A. No, sir.

Q. What was the purpose of trying to contact Judge Smith?

A. Let him know I had the marijuana.

Q. On the morning of November 16th, which was a Tuesday, did you again attempt to call him?

A. Yes, sir.

Q. How many times?

A. I believe I tried about three times before I got him.

Q. Did you get him?

A. Yes, sir.

Q. What happened then? What was the substance of your conversation?

A. That I had changed my mind and wanted to talk to him.

Q. What happened then?

A. He told me he would come over to the office that afternoon and talk to me.

Q. What took place then as a result of that conversation?

A. I went up to the—later on that morning I went up to the FDLE office and Agent Baldwin and Jim Taylor with FDLE put a body recorder on me.

Q. Approximately when was that?

A. That would have been just before lunch.

Q. What type of equipment did Agent Baldwin put on you, do you know?

A. Yes, sir. It was a body recorder and transmitter.

Q. What was the purpose of these?

A. Pardon me?

Q. What was the purpose of them putting these on your body?

A. Record the conversation that Judge Smith and I were to have when he came.

Q. Did you in fact have a conversation with Judge Smith now on that date?

A. Yes, sir.

Q. Where was that conversation?

A. In the Suwannee County Sheriff's Office.

Q. Is that in your office?

A. Yes, sir.

Q. Who else was present?

A. When he and I had the conversation?

Q. Yes, sir.

A. No one.

Q. Just the two of you?

A. Yes, sir.

REPRESENTATIVE RISH: I need Exhibit 8, Manager's Exhibit 8 to be officially marked. It's been through him but Exhibit 8, make sure, if you will—that's our consent, Judge, for the taping.

BY REPRESENTATIVE RISH:

Q. If you will look at that, Sheriff Leonard, and identify it, let it be put in the record as Manager's Exhibit Number 8.

A. (Examining document.) Yes, sir.

Q. Tell us what that was you just looked at?

A. It was consent to record the conversation.

Q. Who is the agent that had you sign it?

A. Agent Baldwin.

Q. Does your name appear on there?

A. Yes, sir.

REPRESENTATIVE RISH: Without objection, we would like to offer that into evidence.

JUSTICE ENGLAND: Admitted.

REPRESENTATIVE RISH: You also, I believe, have 6 that he identified. And I am not sure whether I officially moved to admit it. There was no objection, but I want to make sure the record is straight.

JUSTICE ENGLAND: They're both admitted into evidence.

REPRESENTATIVE RISH: Thank you very much.

(The instruments last above-referred to were entered into the record.)

BY REPRESENTATIVE RISH:

Q. Sheriff, have you had an occasion since November the 16th, 1976 to listen to the original body recording of your conversation which took place on that afternoon?

A. Yes, sir.

Q. When was it? When did you listen to it?

A. I believe once was in February and once was in April.

Q. Did you have occasion while you were looking at it to check it for corrections and accuracy and what not?

A. Yes, sir.

Q. Manager's Exhibit Number 9, Sheriff Leonard, if you would take a look at that please, sir.

REPRESENTATIVE RISH: We would like to ask the Sergeant if he would get ready to distribute, Judge, this exhibit, Number 9, which is a further transcript of the tape that we are going to play in a little bit.

JUSTICE ENGLAND: This is the second transcript of the same type you distributed before?

REPRESENTATIVE RISH: Yes, sir.

JUSTICE ENGLAND: The Sergeant is ready.

REPRESENTATIVE RISH: We would also like to find out what the Senate's reaction would be, whether we are to pick up these other transcripts, what we are to do with them.

JUSTICE ENGLAND: Well, you have not asked that they be moved into evidence. So that would be collected at this time unless some Senator objects and wants to have them retained Sergeant will collect the previous transcripts then and distribute in their place the new transcripts. You may proceed.

BY REPRESENTATIVE RISH:

Q. Sheriff Leonard, while they are distributing these, let us identify them, if you will. Have you looked at that paper I have just handed you?

A. Yes, sir.

Q. Do you know what it represents?

A. Yes.

Q. What is it?

A. It's a transcript of a tape.

Q. Now a transcript of what tape?

A. The one that was made on the 16th of November.

Q. Between you and who?

A. Judge Smith.

REPRESENTATIVE RISH: Judge, as a part of the stipulation on the tapes, we want to go ahead and substitute this one, Mr. Secretary. We have the original over there which we will play. This will be substituted. It will become the property of the Senate so the original can be retained by the FBI. I would like to move officially.

(Whereupon Managers' Exhibit 9 for identification, a transcript of the taped conversation between Sheriff Robert Leonard and Judge Samuel S. Smith on November 16, 1976, was distributed)

JUSTICE ENGLAND: That's the tape we are going to hear in just a moment?

REPRESENTATIVE RISH: Yes, sir.

JUSTICE ENGLAND: Okay. That has been stipulated to.

I might say, Mr. Rish, while we're waiting, not having the privilege to move evidence myself, there was one portion of that last transcript which I would have liked to retain in the Senators' hands. But I trust that's been committed to memory.

REPRESENTATIVE RISH: Justice, I am sure that it is. And they all said that they would take judicial notice that there was only \$4,000 difference from the salary of a Circuit Judge. And they said that after listening to the tape that they didn't know why anybody wanted to be a Justice, didn't want to fool with that job up in Tallahassee.

If we have all those distributed now—

JUSTICE ENGLAND: I think they have been distributed.

REPRESENTATIVE RISH: Thank you very much. We would like to ask Mr. Kirk, if he will, to let us hear this tape recorder.

JUSTICE ENGLAND: Any senators that don't have them, will you hold your hand up and they will be distributed to you.

All right, Mr. Rish, I think we're ready.

REPRESENTATIVE RISH: Mr. Kirk, proceed.

(The following conversation between Sheriff Leonard and Judge Samuel Smith is being typed directly from a transcript of the conversation furnished by the House Board of Managers.)

UNKNOWN MALE: (Inaudible).

SHERIFF LEONARD: Good?

UNKNOWN MALE: (Inaudible).

SHERIFF LEONARD: (laugh) Saw you. (Inaudible). I saw you had that too and I know you.

UNKNOWN MALE: (laugh)

SHERIFF LEONARD: (laugh)

UNKNOWN MALE: I can't swallow it, I try to chew it.

SHERIFF LEONARD: (laugh)

UNKNOWN MALE: (Inaudible).

SHERIFF LEONARD: Uh I. I used to ch, chew that stuff, like, like this old Skoal, you know you can, you ever tried any of it?

UNKNOWN MALE: I tried, I can't, I can't use that, and this stuff's getting where it ruins me, giving me indigestion all the time.

SHERIFF LEONARD: What, what kind you chew?

UNKNOWN MALE: (Inaudible).

SHERIFF LEONARD: Red Man? Judge I want to tell you, I chewed tobacco from the, I don't know when I started chewing, cause I know I was chewing when I started school, you know. And I'd chew, and you know, all I'd do is uh, I'd switch over brands, you know, just switch the brands, like a you chew Red Man, switch over to Big Red, or something other and try it and it would stop that indigestion.

JUDGE SMITH: I might try that 'cause this is got to where I've got it all the time.

SHERIFF LEONARD: Well it's uh, I'd uh, now Skoal, I just like, you know you don't have to spit, you know you just put it down, course it's get eating your lip.

JUDGE SMITH: Yeah.

SHERIFF LEONARD: If you try to hold it there. Uh.

JUDGE SMITH: (Inaudible). Here goes my lip.

SHERIFF LEONARD: Yea.

JUDGE SMITH: It needs it. If I got your call, I wouldn't come over here.

SHERIFF LEONARD: Uh.

JUDGE SMITH: But I thought if I, if I hadn't had complete a hundred, a hundred percent faith in ya Robert. 'Cause somebody came in after you came to my house and talked to me that time? Somebody told me that you and Arthur and Gary Ramsey and the FDCLE were trying to set me up. He said that he didn't know what it was all about but just he had gotten just enough information that he was convinced that ya'll were trying to set me up. Well, and I said I don't know what you're talking about, I don't know about it at all, 'cause I didn't believe it or I wouldn't be here.

SHERIFF LEONARD: Well Judge, if you believe that.

JUDGE SMITH: I wouldn't be here.

SHERIFF LEONARD: I wo, I wish you, you know, and I, I won't even.

JUDGE SMITH: Well, there's, there's no reason why you'd want to do that. We've always been friends and no reason, there's no reason at all.

SHERIFF LEONARD: But uh.

JUDGE SMITH: Look, I'd say if I didn't trust you one hundred percent, I wouldn't be here at all.

SHERIFF LEONARD: Well, Judge, you probably heard by now I got some yesterday and I got.

JUDGE SMITH: I didn't hear.

SHERIFF LEONARD: But uh, and it's, there's about 2500 pounds of it and I'd say it was good stuff, I don't know, I'd say it was. It, you know from what, from what I've saw. And I, I got some more that's, I got to get rid of and I figure, there's 1500 pounds you know that, you, 'cause Judge, and when I say it's 25, there's an estimate you know because.

JUDGE SMITH: Yea.

SHERIFF LEONARD: We don't weigh it, uh, strictly look and guess until it is weighed and. (Pause)

JUDGE SMITH: How much you think you'd want to get rid of?

SHERIFF LEONARD: About 1500 pounds of it. It's, you know, the way its packaged it.

JUDGE SMITH: Yea.

SHERIFF LEONARD: You know it's.

JUDGE SMITH: Was it in blocks or what? Bricks?

SHERIFF LEONARD: Bricks.

JUDGE SMITH: (inaudible) handle a lot easier that way.

SHERIFF LEONARD: Well now, I say it's, I say it's in bricks, it's, and then it's some I haven't, in fact, you know I have to pull a sample, and I haven't tore into those, but now some of them is, about that big square and oh about that.

JUDGE SMITH: It's compressed though.

SHERIFF LEONARD: Right, it, it ain't, ain't none of it loose stuff. It's all been, and.

JUDGE SMITH: Where is it?

SHERIFF LEONARD: I got it in the jail right now.

JUDGE SMITH: Well, I can get the people up here and they bring the money with 'em. But um, I, I had 'em up there before and they brought the money with 'em.

SHERIFF LEONARD: Well, Judge, I, I, give it a lot of thought. And, Judge I live in a trailer now. I've lived in that thing 12 years. It's fixing to fall down around me, now I know that.

JUDGE SMITH: Ain't no use in you doing that Robert.

SHERIFF LEONARD: And, and the stuff is, is there. And what I'd like to know Judge is how, how much could I expect. Now, its.

JUDGE SMITH: It, it depends, it depends on, on the, course you know. It depends on the quality. I say you can get, if it's, just stuff like you, you grow out here in Suwannee County, grow it and not know what you're doing, it's, it's damn sorry stuff, you can get a buck and a half a pound for it. But if it's good stuff we can get as high as two seventy-five a pound for it.

SHERIFF LEONARD: Well, I would say this is good stuff, now you know Judge.

(Pause in conversation for approximately one minute.)

JUDGE SMITH: I'd, I'd say a conservative estimate, we ought to be able to net, better than a \$100,000 apiece.

SHERIFF LEONARD: Well Judge, I'm gonna tell you, you know, like a, you know, I changed my mind and I want this to be a one time affair.

JUDGE SMITH: One time affair and just, just me and you. Nobody now this time.

SHERIFF LEONARD: Well, uh, Judge.

JUDGE SMITH: Ain't nobody (inaudible) another damn soul to (inaudible) but you.

SHERIFF LEONARD: And I appreciate it, and Judge I want to know how's the, you know I can go to a, a certain ways and have the best way to change that stuff from, you know, know you know I can, I can and get it out of the jail, that ain't no problem, getting out of there, now I can get that. And, and what I'd like to do is move it as quick as I could.

JUDGE SMITH: That's the best thing to do.

SHERIFF LEONARD: Now.

JUDGE SMITH: The longer it sits there, the more trouble you got getting it out of there.

SHERIFF LEONARD: Well. And, and I, I, and I know it's good stuff cause it's all wrapped in, in, well I say all, not all of it but some of it wrote in Spanish, you know, so it comes from out of the country, it ain't no home grown.

JUDGE SMITH: It was grown out of the country then?

SHERIFF LEONARD: Yes sir.

JUDGE SMITH: It ought to be good.

SHERIFF LEONARD: But uh, (pause). But how, (pause). How would be the best way Judge to change it to there?

JUDGE SMITH: Well, if you can get it out of the jail. What size vehicle do you need to haul it in?

SHERIFF LEONARD: Um. Judge well.

JUDGE SMITH: Could, could you haul it from the jail in a pickup truck with a camper body on it or something like that?

SHERIFF LEONARD: Yea. Think we can haul it in that.

JUDGE SMITH: Well, the best way to move it, now I'll, I'll have to take the damn stuff and deliver it to Tampa.

SHERIFF LEONARD: Well uh, Judge, I want it out of my hands and into yours as quick as I can get it.

JUDGE SMITH: What, we have, what we have to figure to do is for you to get it, you know a camper or something there at the jail, tell me where to meet you and then we'll load it on, onto my motor home. You can haul it in that and not a damn soul ever (inaudible)

SHERIFF LEONARD: Well. (pause) Judge. If I was to get that truck somewhere could you get somebody to lo, unload it?

JUDGE SMITH: Yea.

SHERIFF LEONARD: If I just left it?

JUDGE SMITH: Yea.

SHERIFF LEONARD: Where would be the best place, you know, the handiest for you, you know, where it would be out of the way and.

(Pause in conversation for approximately twenty seconds.)

JUDGE SMITH: The shorter haul for you, the better off you are.

SHERIFF LEONARD: Right, I, I, that's what I want. I. (Pause). 'Cause I just like to park the truck.

JUDGE SMITH: Lock it up and leave it.

SHERIFF LEONARD: Leave it. Then, then, you tell me 'bout how long I can expect for come back after the truck, it be clear sailing.

JUDGE SMITH: We're better off to do it here in this county someplace. You know of any place around here where you could, we should do it at night. Where you can pull the truck up there and leave it, then I could come in there behind you and unload the truck. We could, could transfer and you could leave it there for hour and come back and get it. (Pause in conversation for approximately thirty-five seconds.)

SHERIFF LEONARD: Judge, I'm just trying to think of somewhere, you know it's, is easy to get to and yet out of the way, you know uh.

JUDGE SMITH: Isolated. That's right. (Pause in conversation for approximately thirty seconds.)

SHERIFF LEONARD: Well, let's see. (Pause in conversation for approximately twenty seconds.)

SHERIFF LEONARD: Judge you know anything about Little River Springs?

JUDGE SMITH: Where?

SHERIFF LEONARD: Little River Springs. Uh, why I say that, that's a hard road, that's a paved road in there, and, the campers, you know, well, you see you going in there. Well, course, in this time of year wouldn't think anyone was in there camping on account of the cool weather.

JUDGE SMITH: Not in this kind of weather there wouldn't be.

SHERIFF LEONARD: Uh.

JUDGE SMITH: You want to get in my car and ride out there? So you can show me where it is. (Pause in conversation approximately twenty seconds.)

SHERIFF LEONARD: Judge, well, I don't, I don't know. I was fixing tell ya place'd. How long would it to take you to move that stuff from one place to another?

JUDGE SMITH: Meeting.

SHERIFF LEONARD: Yea, from one vehicle to another.

JUDGE SMITH: Well I don't know.

SHERIFF LEONARD: It wouldn't.

JUDGE SMITH: It won't take long, I mean just a, little while. It would take less time to move from one vehicle to another than it would to get it from the jail into that truck.

(Pause in conversation for approximately fifteen seconds.)

SHERIFF LEONARD: What time of day would you want to do it Judge?

JUDGE SMITH: At night, sometime at night.

SHERIFF LEONARD: Okay.

(Pause in conversation for approximately thirty-five seconds.)

SHERIFF LEONARD: Judge, you know where the city dump is here? South on 29 you can't miss it, 'bout, you can't miss it. It's a, it's a dirt road in there, but it's hard, you know, you can travel in there good.

JUDGE SMITH: You can turn around in there all right?

SHERIFF LEONARD: Right. Right. Uh, it, well it, the garbage trucks go back, keep it packed good, back in there. Even if they, even if they saw us pull that truck in there, they wouldn't think anything about it.

JUDGE SMITH: Just in pulling out, like when, (inaudible) nighttime unloading garbage.

SHERIFF LEONARD: Right. But at night, you know, that the gate's still open, but no one goes in. I'll put it right in there.

JUDGE SMITH: All right, when you wanna do it?

SHERIFF LEONARD: Well, when would be the best for you?

JUDGE SMITH: Tonight, anytime.

SHERIFF LEONARD: Okay sir. I'll pull the truck in there, I'll lock the door, on the truck you know, where if somebody was to happen to come by there and throw that lid they wouldn't look. I'll lock the door, I'll put the key under the floor mat of the truck, you know you uh.

JUDGE SMITH: The camper door.

SHERIFF LEONARD: Huh?

JUDGE SMITH: You gonna lock the camper, back, the back door of the camper.

SHERIFF LEONARD: Well, I'll tell you what I thought I'd do is, is I got a U-Haul It there, I can tell 'em, I, you know, the jail, they wouldn't even think nothing, I'd tell 'em I got to load it back up. I ain't got to take it all to the lab, we got to take some of it.

JUDGE SMITH: Right.

SHERIFF LEONARD: So I take it, put it back on that truck, I'll put a padlock on that door and I'll slide the key to that padlock up under the floor mat on the driver's side and just leave it. I'll take the key out of the truck in case someone comes, they can't drive that truck off. But I'll fix it where you can get to it, I'll park it where you can get to it.

JUDGE SMITH: What time are you gonna have that thing?

SHERIFF LEONARD: Let me see Judge. (Short pause). Well, it would probably be better Judge about, well it gets dark so early, so there ain't, ain't many people goes in there, they might go in first dark, but I, but as early as nights is come, I say about ten o'clock. Uh, at, at ten o'clock, I'll have it there.

JUDGE SMITH: I'll be there at ten then.

SHERIFF LEONARD: At ten o'clock I'll drive it in there and uh.

JUDGE SMITH: How far out on 29 is it?

SHERIFF LEONARD: You can't miss it Judge, you go on out and there's a sign there says, Suwannee County Land-Fill Area, or something, but it's a good road.

JUDGE SMITH: It'll be on the left or the right (inaudible)

SHERIFF LEONARD: It'll be left.

JUDGE SMITH: Okay.

SHERIFF LEONARD: But you'll come, you'll know you're getting to it, you'll come to a house, right beside of the road, and fact is, well, ride out there when you start to Lake City, ride out that-a-way and you can pick 252 up and go back, but uh, pay attention 'cause you'll come to a house right side of the road, there, I mean built right on the right close to the road, and then there's a road turns off by it but the next little road there, just, it's a half a quarter, I believe what it is, but ride out there and you'll see it's land-fill.

JUDGE SMITH: I'll go by there.

SHERIFF LEONARD: But I'll, but I'll put it where you won't have no worry about getting stuck or anything else. And Judge, I'll get out of there when you come. If you bring anybody with you, I'm gone. But if, uh I'll park it at ten if you'll give me just a few minutes. And I'll be out of there.

JUDGE SMITH: Okay. Give me about an hour and you can come back and get the truck.

SHERIFF LEONARD: Okay, but I'll park it in there and I'll, what I'll do is, this afternoon I can, I'll fix that up I'll get me a ride out of there.

JUDGE SMITH: Okay. I'll uh (inaudible) a telephone call get ready for me.

SHERIFF LEONARD: Okay.

(CONVERSATION WITH JUDGE SMITH ENDS)

JUSTICE ENGLAND: Mr. Rish, proceed.

REPRESENTATIVE RISH: We would like to resume questioning Sheriff Leonard if we could.

CONTINUED DIRECT EXAMINATION BY REPRESENTATIVE RISH:

Q. Sheriff Leonard, the tape that we just heard, is that your voice and the voice of the Respondent on the afternoon of November 16th, 1976?

A. Yes, sir.

Q. Where was that conversation made?

A. In the Suwannee County Sheriff's Office.

Q. Was that tape made pursuant to your cooperation with the law enforcement, other law enforcement officers such as the FBI and FDCLE?

A. Yes, sir.

Q. If you would, turn to Page 4. Do you have a copy of that transcript?

A. No, sir.

REPRESENTATIVE RISH: Would you hand him a copy?

BY REPRESENTATIVE RISH:

Q. Page 4, the top of the page talking about 1500 pounds, Sheriff Leonard. What marijuana are you referring to there?

A. That's the marijuana that was brought in by the FBI agent.

Q. If you turn to Page 5. You say, "Well, I would say this is good stuff. Now, you know, Judge." Then there's a pause for about a minute and there's some scratching sounds. What was the scratching sound?

A. Judge Smith was figuring on a piece of paper.

Q. What was he figuring?

A. I took it to be figuring money.

Q. What did he tell you after he got through figuring?

A. He and I were to get \$100,000 out of it.

Q. If you turn to Page 10 and look on there, there's a reference to south on 29. You can't hear it too well but is that 29, is that what it says or what does it say?

A. No, sir. It should be 129.

Q. What road is that?

A. That's the road that runs between Live Oak and Branford, Florida.

Q. Is that the road that goes to the landfill?

A. Yes, sir.

Q. If you look further down it says Judge Smith, "Tonight, any time." What did he tell you there? What was his conversation?

A. That tonight or any time.

Q. Turn to Page 11, if you would, Sheriff Leonard. You make reference to the key to the padlock under the mat. What do you mean by that?

A. The padlock that was on the back door of that truck.

Q. Is that where you locked the marijuana inside the truck?

A. Yes, sir.

Q. Turn to Page 12, if you would. Mr. Smith says, "How far out on 29 is it?" Do you remember what he said there?

A. It should have been 129 there.

Q. Do you have any independent recollection that he said 129?

A. Mr. Rish, I took it he said 129. I couldn't swear to that.

Q. Turn to Page 13, if you would. You have Judge Smith and right after say, "I will get a ride out of there." It has, "Okay." And also, "Okay. I will telephone or telephone call when you get ready for." What did you hear the Respondent Smith say at that time?

A. That he had to make a telephone call.

Q. Sheriff, after your conversation with him on November 16th, I believe you testified you went out and had the recorder and the transmitter taken off by Agent Baldwin, is that correct?

A. Yes, sir.

Q. What did you do at that time?

A. We listened—we didn't listen to the body recorder. We listened to the transmitter recording and then I went about minding my own duties.

Q. Sheriff, after you did that now, did you tell anybody about what was going to take place that night?

A. Yes, sir.

Q. Who was that?

A. Chief Deputy Beach.

Q. What did you relate to Chief Deputy Beach?

A. That I was going to put the marijuana in the dump and I wanted him to pick me up on the south side of the dump after I walked through the woods.

Q. That's the landfill that you all discussed, is that what you are calling the dump?

A. Yes, sir.

Q. After you got it out there, then he was to pick you up, you were going to walk through the woods and he was going to pick you up, is that right?

A. Yes, sir.

Q. On the afternoon in question, about what time did Judge Smith arrive out there, when you all had this conversation?

A. I don't know the time. It was the right after lunch.

Q. Did you see Agent Baldwin that afternoon?

A. Yes, sir.

Q. Where was he?

A. The rest area on I-10.

Q. What was the purpose of the meeting there?

A. To pick up a beeper tracking device to put in that marijuana.

Q. Did you in fact pick up a beeper?

A. Yes, sir.

Q. What did you do with it?

A. Put it in a stack of marijuana.

Q. Where was the marijuana?

A. At the Suwannee County Jail.

Q. You picked up the beeper from the agent, took it back to your jail and inserted it in a bag?

A. Yes, sir.

Q. Is this in a manner that is not visible readily or you just put it on top? What did you do? How did you do that?

A. I just—the stuff is baled and I just cut a hunk off the top, drilled a hole through it for the antenna to stick up through it and put that part back on top of the beeper and tied the sack back.

Q. You keep your marijuana stored in your jail, is that correct, when you have evidence there?

A. Yes, sir.

Q. And that's where you put the beeper that was stored in the jail?

A. Yes, sir.

Q. That was the marijuana that was to go out that night to the dump or to the landfill, is that correct?

A. Yes, sir.

Q. Sheriff, do you know marijuana when you see it?

A. Yes, sir.

Q. Was the marijuana that you put that into, was that the same marijuana that you picked up at I-10 the day you got the agent?

A. Yes, sir.

Q. What was the purpose of the beeper being put in there?

A. Where that marijuana could be tracked.

Q. What did you do after you put the beeper in there?

A. We loaded the marijuana on the truck and I took the truck out to the landfill.

Q. Was that the same truck you had taken it off of?

A. Yes, sir.

Q. That was the truck you had seized earlier in the day or the day before?

A. Yes, sir.

Q. Was the room empty when you put it in there the day before?

A. Of marijuana?

Q. Yes, sir.

A. Yes, sir.

Q. There wasn't any marijuana at all in the room?

A. No, sir.

Q. When you took it out on the evening of the 16th, was it empty when you left?

A. All the marijuana was gone.

Q. How long approximately did it take for you and—who loaded it on the truck?

A. Me and two trustees.

Q. Didn't raise a question? What did the trustees think you were doing?

A. They thought I was going to take it to Tallahassee.

Q. To FDCLE?

A. Yes, sir.

Q. How long did it take you all to load it?

A. I don't know, Mr. Rish. I would say probably 20 minutes, I imagine, something like that.

Q. What did you do after you loaded it on the truck?

A. I waited around a little longer until about 9:30. And then I took the truck to the landfill.

Q. Tell us now in relation to your office and jail, I assume they are pretty close together, your office and the jail?

A. Yes, sir.

Q. Is it in one building, your office and the jail?

A. The jail connects to the courthouse, yes, sir.

Q. In relation to that now, tell us how you go to the sanitary landfill that you have been talking about.

A. 129 is the Ohio Avenue in Live Oak and it runs north and south. And that's the street the courthouse faces.

Q. How far do you go on 129?

A. It's about seven miles down to the road cutting off of 129 to go to the landfill, you turn east and go down about three quarters of a mile.

Q. Is that on a dirt road?

A. Yes, sir.

Q. Then that gets you to the landfill?

A. Yes, sir.

Q. Tell us that night in question exactly how you proceeded and where you left and what you did down there.

A. Okay. When I left the jail, I went up Pine Street and I picked up 51 back over one block to 129, I went south on 129 until I came to the road going to the landfill. I went down it. When I got to the landfill, I turned right. Just as I turned right, which I would have been headed south then, I just turned right again and the truck was facing west. It would have been right side of the road where it could be unloaded.

Q. What was the condition of the road that night?

A. Wet.

Q. After you parked the truck, what did you do then?

A. I walked through the woods and met Mr. Beach over south of the landfill.

Q. Did you do anything particularly to the truck when you left it?

A. I took the ignition keys with me and stuck that key under the floor mat.

Q. You took the switch key with you?

A. Yes, sir.

Q. And the key to the padlock on the back, now what did you do with it?

A. Stuck it up under the floor mat on the driver's side.

Q. Did you lock the padlock?

A. Yes, sir.

Q. The one on the back of the truck?

A. Yes, sir.

Q. You put the key under the mat. Now did anybody, to your knowledge, know about where that key was going to be except you?

A. The only ones that knew where that key was would have been Judge Smith and if anyone heard that transmitter.

Q. After you went through the woods, what happened that night?

A. Mr. Beach picked me up and we went back to Live Oak and went out to Jay's Restaurant and drank some coffee.

Q. What did you do then?

A. After, it was a little after 10:00 o'clock and we went back to pick up that truck.

Q. Did you find the truck?

A. Yes, sir.

Q. Did you examine the truck?

A. Yes, sir. The door was locked.

Q. Did you open the door?

A. I went and got the key and opened the lock and the truck was empty.

Q. Where was the key?

A. Back under the floor mat.

Q. The truck was empty?

A. Yes, sir.

Q. What did you do then?

A. I took the truck back to Live Oak, parked it behind the jail and went home.

Q. Who is Mr. Beach that you were speaking of?

A. He was the chief deputy.

Q. Is he deceased now?

A. Yes, sir.

Q. When did he die?

A. March of this year.

Q. Have you seen that marijuana again since the night that you put it on the truck?

A. I saw part of it.

Q. Where did you see it?

A. In the basement of the Federal Court Building in Jacksonville.

Q. Is it all there or was it all there when you saw it?

A. No, sir.

Q. Approximately when did you see the marijuana in the basement?

A. I believe that was in April that I believe I saw it.

Q. How do you know that was the same marijuana?

A. By the way it was packaged and some red markings on the bag.

Q. Did you have some markings that you could specifically identify yourself?

A. The bag was all marked when they was -- I guess when it was confiscated they used it for that marking.

Q. Where did you go after you took the truck back home? You said you took the truck back to the jail after it was unloaded. Now what did you do then?

A. I went home.

Q. Sheriff, do you know a man named Homer Ratliff?

A. Yes, sir.

Q. I believe you've already told us that you did. Did you have occasion to see him concerning this marijuana after November the 16th?

MR. CACCIATORE: Your Honor, at this time I would like to interpose an objection. I realize that the Court has already advised me that the hearsay is not a proper objection in these proceedings. But I think that this goes to a matter that's more than hearsay. Mr. Ratliff was here this morning. Mr. Ratliff relied on his Fifth Amendment privilege. He did not testify except for his limited testimony and I think it would be highly improper for us now to go into a conversation that Sheriff Leonard had with Mr. Ratliff.

JUSTICE ENGLAND: Mr. Cacciatore, if Sheriff Leonard had a conversation with anyone whether they invoke the privilege or not he would be privileged in a court or anywhere else to repeat that conversation, if I understand where Mr. Rish is heading.

REPRESENTATIVE RISH: Judge, I haven't even asked him about a conversation yet.

MR. CACCIATORE: I realize that. I was just concerned and I wanted to make my objection. I apologize to you.

REPRESENTATIVE RISH: Well, I may not even ask him about the conversation.

JUSTICE ENGLAND: In that case, I will withhold my ruling until we get there.

REPRESENTATIVE RISH: Thank you, sir.

BY REPRESENTATIVE RISH:

Q. Did you have an occasion to talk to Homer Ratliff concerning the marijuana after November the 16th?

A. Yes, sir.

Q. How soon after that; do you remember?

A. That would have been on the 23rd.

Q. Where was that; do you remember?

A. Suwannee County Sheriff's office.

Q. What time of day was it?

A. It was in the morning part of the day.

Q. You don't remember about what time?

A. I don't wear a watch.

Q. Who else was present there?

A. When he and I had our conversation?

Q. Yes, sir.

A. No one, sir.

Q. You did have a conversation with him at that time?

A. Yes, sir.

Q. Where was he when you first heard it?

A. He was in the outer office when I first heard it.

Q. What was his particular demeanor on that occasion? How did he act?

A. He was crying.

Q. Did he seem nervous or upset or anything?

A. Yes, sir.

Q. Did you talk to him about any of the details or what had happened?

A. He started talking to me about some marijuana and I told him not to tell me anything, I didn't want to know it and I put him in touch with a man that he needed to talk to.

Q. Did you put him in touch with somebody?

A. I put him in touch with Mr. Nehrbass.

Q. Who is Mr. Nehrbass?

A. He was head of the Jacksonville FBI office at that time.

Q. You called Mr. Nehrbass?

A. Yes, sir.

Q. Did you give the phone to Mr. Ratliff?

A. Yes, sir.

Q. He talked to Mr. Nehrbass?

A. Yes, sir.

Q. What did you do while he was talking to Mr. Nehrbass?

A. I went in the outer office and answered a call for me.

Q. Did you speak to Mr. Nehrbass when he got through?

A. Yes, sir.

Q. What else, what did you do then?

A. I followed Mr. Ratliff, I picked Jim Taylor of the FDCLE office up in back of the jail and I followed Mr. Ratliff over to the Holiday Inn in Lake City, Florida.

Q. What did you do then after you followed Mr. Ratliff over to the Holiday Inn?

A. When he went to the parking lot at the Holiday Inn I turned around and went back to Live Oak.

Q. Sheriff Leonard, when Homer Ratliff came to you on November the 23rd there that was a Tuesday, at that time was he under arrest?

A. No. Not to my knowledge. No, sir.

Q. You said that he was crying at that time?

A. Yes, sir.

Q. As far as you knew was he a suspect being involved in marijuana?

A. Up to that point?

Q. Yes, sir.

A. No, sir.

Q. Had you contacted him to come see you?

A. No, sir.

Q. Sheriff, at the Suwannee County Sheriff's office there at the Courthouse did you have a radio in there?

A. Yes.

Q. It has a particular frequency?

A. Yes, sir.

Q. Does it ever spill over into the FBI or FDCLE frequency?

A. I would say no sir.

Q. After you testified about being approached by Mr. Lee in late July and went on in July 27th with Mr. Ramsey of the FBI, were all of your conversations regarding marijuana in cooperation with the FBI?

A. Yes, sir.

Q. Prior to the latter part of July when Mr. Lee came to you, prior to this, did you ever talk to Lee or Respondent Smith or anyone about taking the marijuana you had seized?

A. No, sir.

REPRESENTATIVE RISH: You may inquire.

JUSTICE ENGLAND: Mr. Nutter.

SENATOR SCARBOROUGH: Mr. Chief Justice?

JUSTICE ENGLAND: Just a moment. Senator Scarborough.

SENATOR SCARBOROUGH: When will we be able to ask some questions? After Mr. Cacciatore and his attorney—

JUSTICE ENGLAND: Yes. After both Counsel have completed with the witness. You can proceed, Mr. Nutter.

MR. NUTTER: Thank you.

CROSS EXAMINATION

BY MR. NUTTER:

Q. Sheriff Leonard, how long have you known—I think you stated that you knew Possum Lee or Poss Lee quite a while; is that right?

A. Yes, sir.

Q. You grew up with him?

A. Yes, sir.

Q. You stated that Poss Lee came to you sometime in July and do you have a fairly good recollection of when that occurred, early part of July, latter part of July?

A. Mr Nutter, if you're asking me a certain day, I can't tell you. No, sir.

Q. All right. You had qualified for the election, had you not, because it was coming up in September in the primary?

A. Yes, sir.

Q. In 1976?

A. Yes, sir.

Q. Did he talk to you before you qualified?

A. No, sir.

Q. Didn't you meet with Poss Lee quite frequently to discuss your cases and so forth; he was an investigator with the Public Defender's office?

A. Mr. Nutter, I don't understand what you're asking me.

Q. Well, let me ask you this: Were you a friend of Poss Lee?

A. Yes, sir.

Q. Did you socialize with him?

A. Yes, sir.

Q. Did you discuss your cases with him?

A. The ones he was involved in, yes, sir.

Q. All right. Did he ever assist you in any of the cases that you were working on?

A. Mr. Nutter, if you will explain to me what you mean, maybe I can answer it.

Q. Well, did you ever discuss with him some of the investigations that you were carrying on and discuss with him some of the details of those investigations or ask his help?

A. Are you asking me, Mr. Nutter, did Poss Lee ever tell me enough information to make an arrest?

Q. Well, let me ask that. Did he?

A. No, sir.

Q. With respect to the meeting that you had with him after you left Scotty's Restaurant you stated that you rode around for a while in your car, he was with you and he made some comment to you about the marijuana in the jail; is that right?

A. Yes, sir.

Q. And you were with him about an hour and a half, I believe you testified?

A. I don't remember—it was probably that long, yes, sir.

Q. All right. Now did you discuss that marijuana in your jail for an hour and a half?

A. No, sir.

Q. What other things did you discuss?

A. A little bit of everything, Mr. Nutter.

Q. Do you recall being shown a photograph and newspaper that came out around August of '76, August the 11th, I believe, that had a picture of you in it, Poss Lee was on the back of a police car and another deputy was there and I believe Poss had a shotgun and the deputy had a shotgun and you were standing beside the car; do you recall that?

A. Describe that picture to me again?

Q. All right. It was a picture that was in the newspaper and Poss Lee was leaning over a sheriff deputy's car, you were in the picture standing beside the car and there was another deputy standing beside the car and Poss Lee had a shotgun and the other deputy had a shotgun; do you remember that? In August of 1976.

A. Mr. Nutter, I know the picture you're describing but you're not describing it the way the picture was. I can't say yes, I saw that picture you're telling me about.

Q. All right. Would you describe the way the picture was?

A. I don't remember what the date was on the newspaper. I can't—if you're trying to tell me a date and you're right, it's right, but it was not the picture in the newspaper.

Q. All right. I'm not trying to tell—

A. And Poss Lee had a shotgun, yes, sir.

Q. All right. What was he doing with a shotgun?

A. Mr. Nutter, what are you asking me, what was he doing? He was holding it.

Q. Wasn't he helping you and assisting you at that time on something that you were working on?

A. If you're asking me did Poss Lee have a shotgun, yes, sir, he had one.

Q. Was he helping you at that time?

A. Yes, sir, I hope he was.

Q. All right.
(Laughter.)

Q. In 1972, Sheriff Leonard, didn't Poss Lee give you \$700 prior to the election that you were entering at that time?

A. Poss Lee loaned me \$700, yes, sir.

Q. All right. And you did have occasion to socialize with him and meet with him and discuss different things about your case; did you not?

A. The case that he was involved, yes, sir. We socialized. Yes, sir.

Q. Are you acquainted, Sheriff Leonard, with a gentleman by the name of Fred Morrison?

A. Yes, sir, I know Mr. Morrison.

Q. And how do you know him?

A. I came to know him by his work with the Public Service Commission.

Q. Where does he live, as far as you know?

A. He lives just south of McAlpin, Florida.

Q. Is he a friend of yours?

A. I hope so.

Q. Have you talked with him about this case that you testified about here today?

A. Yes, sir.

Q. Do you recall ever telling Mr. Morrison that on a particular occasion that you sent Poss Lee to see Judge Smith about this marijuana situation? In other words, you were the one that initiated Poss Lee talking to Judge Smith about this?

A. No, sir. That would be a lie.

Q. Mr. Morrison would not be telling the truth if he testified to that, then?

A. If he told that, he wouldn't be telling the truth.

Q. Now who are the law enforcement prosecutors in your area, investigators? Don't you have a FDCLE office in your courthouse, don't you?

A. Yes, sir.

Q. Who is stationed there? Don't you have two agents that are there, J. O. Jackson and James Taylor?

A. Yes, sir.

Q. And Mr. Arthur Lawrence is there as the State Attorney; isn't that correct?

A. Yes, sir.

Q. Mr. Gary Ramsey, the individual that you talked to about this situation is in Tallahassee; is that right?

A. Yes, sir.

Q. Yet you went to Mr. Ramsey with this and at the time you talked to Mr. Ramsey about it you did not tell Mr. Lawrence or J. O. Jackson or Jim Taylor at the same time; did you?

A. That's right, sir.

Q. Now, how many days passed from the time that you say that Poss Lee talked to you about this to the time that you talked to Mr. Ramsey about it?

A. I don't know, sir.

Q. But some time did pass; didn't it?

A. Yes, sir.

Q. Was it more than one or two days?

A. Yes, sir.

Q. Do you go past the office of the FDCLE, Florida Department of Criminal Law Enforcement, in your courthouse on a daily basis?

A. No, sir.

Q. Do you see Jim Taylor or J. O. Jackson on a daily basis over there?

A. Not on a daily basis, no, sir.

Q. How frequently would you see them during a week?

A. It would be hard to say.

Q. Do you have any contact on a daily basis with Arthur Lawrence's office?

A. No, sir.

Q. Back in July or August of 1976 you didn't have any way to contact either one of these offices about this matter?

A. You're asking me did I have a way?

Q. Yes, sir.

A. Yes, sir.

Q. Do you recall when you first talked to Mr. Lawrence or a Mr. Taylor with FDCLE about this case?

A. No, sir, it would have been after I talked to Mr. Ramsey.

Q. It would have been sometime afterwards. Do you remember how much time had passed?

A. No, sir.

Q. Now, Sheriff Leonard, is it your statement here today that Gary Ramsey with the FBI is the first person that you talked to about this case?

A. Yes, sir.

Q. That was in July of 1976?

A. Yes, sir.

Q. With respect to your testimony and this meeting with Poss Lee in your car, I believe then you testified to a meeting sometime later where Judge Smith happened to be in the Court-house in Suwannee County and came into your office with Poss Lee; is that right?

A. Sir, I didn't testify to that.

Q. You didn't? Well, after you saw Poss Lee in July, when was the next time you saw Poss Lee with respect to this case?

A. That was when he and Judge Smith came to my office.

Q. When was that?

A. I wouldn't know the date, sir.

Q. Was the Judge over there on court business; do you know?

A. I don't know, sir.

Q. How long did that discussion and that meeting last?

A. About 10 minutes.

Q. And then the next time you saw the Judge, I believe you testified, was about a week later and it was in the hall and you passed him in the hall; is that right?

A. Yes, sir.

Q. And how long did that encounter last?

A. Just more or less meeting and speaking and going off.

Q. Going on about your business; right?

A. Yes, sir.

(Short pause.)

Q. Now, from that encounter in the hall throughout the balance of the month of August, did you have any further contact with Sam Smith with respect to this matter that you have testified about?

A. About marijuana?

Q. Yes, sir.

A. No, sir.

Q. Did he contact you?

A. Sir?

Q. Did he contact you between that last meeting that you had in the hall and the rest of the month of August, in any way, about the marijuana?

A. No, sir.

Q. Did you contact him?

A. About marijuana?

Q. Yes, sir.

A. No, sir.

Q. Now were you discussing this matter with Special Agent Ramsey with the FBI during this month of August?

A. If I saw him.

Q. Would you deliberately meet with him to discuss the matter or just on a casual basis if he happened to come by?

A. When he came by.

Q. There wasn't anything deliberate on his part or your part to discuss this case?

A. No, sir.

Q. All right. Now when did you talk to Sam Smith again about this case?

(Short pause.)

A. I don't guess I talked to him again until the 9th.

Q. The 9th of September?

A. Right.

Q. Is that right, sir?

A. Yes, sir.

Q. Now you talked to him and you were in your office?

A. Yes.

Q. Am I correct?

A. Yes, sir.

Q. And Special Agent Ramsey had come by your office?

A. Yes, sir.

Q. And he was present at that time?

A. Yes, sir.

Q. Now was that a time that you yourself picked up your telephone and contacted Sam Smith?

A. Yes, sir.

Q. Now, Sam Smith didn't call you?

A. No, sir.

Q. All right. You had not had any contact with him except for this last meeting in the hall in August and on September the 9th, you picked up your telephone and you contacted him?

A. That's right, sir.

Q. And didn't you suggest that you meet with him at his house on the following day?

A. I suggested we—I wanted to talk to him, but he is the one that said to come to his house.

Q. But you did suggest that you wanted to talk with him?

A. Yes, sir.

Q. All right. Then you went to his house the following day; is that correct?

A. Yes, sir.

Q. Now after the 10th of September which is the meeting at his house the next day, did he contact you on the 11th of September or did you contact him on the 11th of September with respect to this case?

A. No, sir.

Q. Did he contact you or did you contact him on the 12th of September?

A. No, sir.

Q. On the 13th?

A. In reference to marijuana?

Q. Yes, sir.

A. No, sir.

Q. On the 14th?

A. No, sir.

Q. Now Sheriff Leonard, didn't you have a meeting on the 17th of September with Special Agent Ramsey of the FBI and Agent Walton, I believe it was, in your office?

A. In my office?

Q. Yes, sir.

A. No, sir.

Q. Was it in the office of the FDCLE?

A. No, sir.

Q. Did you meet with Agent Ramsey on the 17th?

A. Yes, sir.

Q. Did you tell Agent Ramsey at that time that you did not want to participate any further in this scheme and contact Sam Smith any further about this matter?

A. If you're asking me did I tell him that I didn't want to be directly involved in it the answer would be yes, sir.

Q. All right. And specifically didn't you tell him that you did not want to directly contact Sam Smith again?

A. I don't believe it was direct contact with him, no, sir, I don't think.

Q. But you didn't want to be directly involved in it anymore; is that right?

A. That's correct.

Q. Did Special Agent Ramsey advise you of the obstruction of justice statute that day?

A. No, sir.

Q. He didn't tell you and explain to you what obstruction of justice was?

A. No, sir.

Q. Did he at any time explain that to you?

A. No, sir.

Q. Now Agent Ramsey would be lying if he said that he did; wouldn't he?

A. Mr. Nutter, I think what you're asking me and if I may, I know what you're leading up to. Mr. Ramsey never explained obstruction of justice charges to me. When I told him that I didn't want to do it, he said, you know, if I didn't do it to go ahead and help him that I would be obstructing justice but never did he quote any obstructing justice laws to me.

Q. All right. Did you after that conversation continue to help Agent Ramsey with this case?

A. Yes, sir.

Q. Now as a matter of fact you and Agent Ramsey set another or set a trap for the 20th, 21st and 22nd when you had that marijuana in the truck out there behind the jail; didn't you?

A. Yes, sir.

Q. And did you try to get the word out about that marijuana that was there to the community and hope that something would be done to it?

A. Yes, sir.

Q. What did you do to get the word out?

A. I went to Scotty's Restaurant.

Q. Then what did you do there?

A. I just let the word out that the truck was there.

Q. And that there were so many pounds of marijuana on the truck?

A. Yes, sir.

Q. What was your intention for doing that?

A. Hoping the word would go back to Judge Smith.

Q. Now did Judge Smith contact you on the 20th of September about that?

A. No, sir.

Q. Did he contact you on the 21st of September?

A. He didn't contact me. No, sir.

Q. Did he contact you on the 22nd of September?

A. I contacted him, yes, sir.

Q. But you did try to call him, didn't you?

A. Yes, sir.

Q. Did you talk to him?

A. Yes, sir.

Q. Was there any conversation about marijuana in that contact that you had there?

A. No, sir.

(Short pause.)

Q. Now after that occasion on the 20th, 21st and 22nd of September, did you have any further occasion to contact Sam Smith about marijuana in the month of September?

A. No, sir.

Q. Did he contact you about marijuana?

A. No, sir.

Q. Did you contact Sam Smith during the month of October about marijuana?

A. No, sir.

Q. Did he contact you about marijuana during the month of October of 1976?

A. No, sir.

Q. Now this incident that came up on the 15th and 16th of November, wasn't this, again, a plan that you and Gary Ramsey worked out for this FBI marijuana to be seized and brought in and kept at the jail?

A. Yes, sir.

Q. All right. Now whose marijuana was this?

A. It belonged to the Federal government, I imagine.

Q. You don't know whose marijuana it was?

A. You're asking me do I know where the marijuana came from? I never saw the marijuana until I saw it at the inspection station.

Q. The only thing you know about it is that you seized a truck there at the inspection station that had marijuana in it?

A. Yes, sir.

Q. And did you know the identity of the driver of that truck?

A. Do what, Mr. —

Q. Did you know the identity of the driver of the truck?

A. Did I know who he was?

Q. Yes, sir.

A. His name or that he was an agent?

Q. Well, did you know that he was an agent and did you know his name?

A. Not until we started to the jail, I didn't know that he was an agent.

Q. All right.

A. I figured he was.

Q. All right. With respect to this trap that was set then on the 15th of November that marijuana came from the FBI, did it not? It was in their custody, anyway?

A. It was the first time that I saw it, yes, sir.

Q. It wasn't marijuana that you had seized anywhere, was it, other than at the inspection station?

A. Do what —

Q. All right. Let me back up. You didn't seize that marijuana on any previous occasion, the only time you saw it was at the inspection station?

A. That's right, sir.

Q. Now then did you pick up the telephone and call Sam Smith on November the 15th?

A. I tried to.

Q. All right. How many times did you try to call him?

A. I believe it was three.

Q. Three times?

A. Yes, sir.

Q. Were you able to get in touch with him?

A. No, sir.

Q. What were you calling about?

A. To let him know I had the marijuana.

Q. Did you finally get in touch with him and let him know you had it?

A. On what day, sir?

Q. The 16th of November?

A. Yes, sir.

Q. It was your effort by picking up the telephone and calling him that you were able to let him know that?

A. Yes, sir.

Q. Did you ask him to see you?

A. I told him I had changed my mind. Yes, sir.

Q. Now, sir, Sheriff Leonard, have you ever seen Sam Smith in possession of any marijuana?

(Short pause.)

A. Ask me that again, Mr. Nutter.

Q. With respect to this marijuana on November the 15th and 16th, have you ever seen Sam Smith in possession of this marijuana?

A. Of that marijuana?

Q. Yes, sir.

A. No, sir.

Q. There has been some testimony with respect to a destruction order. Have you ever seen a destruction order signed by Sam Smith for marijuana?

A. No, sir.

Q. All right. Now the tape recording that was made of your meeting on November the 16th, you have testified with respect to that tape recording and did you not when you finished with that conversation turn that tape recording over to the FBI?

A. That's right, sir.

Q. All right. Was there anything to prohibit the FBI from listening to that tape recording at the time you turned it over to them?

A. No, sir.

Q. All right. So with respect to your statement that Judge Smith would be the only one that would be aware of a key in that truck would be incorrect?

A. That's not what I testified to.

Q. Is it my understanding that unless somebody was monitoring the frequency of the channel that you were recording on that nobody else would know where that key would be except Sam Smith?

A. Judge Smith and I, that's what I testified to.

Q. Now it would be your testimony that the FBI wouldn't have that knowledge or the location of that key?

A. No, sir, that was not what I —

Q. In other words, I'm asking you right now would you be able to say that nobody else but yourself and the person you talked to on the 16th would have knowledge of where that key would have been and would that be it?

A. No, sir, that wouldn't be right.

Q. All right. The FBI would have known where it would have been, right?

A. Yes, sir.

Q. Was this a plan that they had knowledge of the facts of?

A. Do what, sir?

Q. This plan for the marijuana and the truck and so forth on November the 15th and 16th, didn't they have knowledge of these facts?

A. Are you asking me, Mr. Nutter, did they know about the 15th, the 16th?

Q. Yes, sir.

A. Yes, sir, they did know.

Q. Didn't they or weren't they aware of how the marijuana would be locked in the back of the truck and the key would be placed under the mat?

A. If they listened to that tape, yes, sir.

Q. All right. Now was there anybody from your office that kept that truck under surveillance at the dump?

A. No, sir.

Q. Who kept it under surveillance?

A. I don't know, sir.

Q. All right. Did anybody from the FBI keep it under surveillance as far as you know?

A. As far as I know or what I think?

Q. Well, what you think, let me ask you that.

A. Yes, sir, they had it under surveillance.

Q. All right. Now do you know if any marijuana was missing after the amount that you saw in Jacksonville and you have described some sacks that you saw in Jacksonville, was there any marijuana missing from that, from the original amount that you had put in that truck?

A. Are you asking me was there as much in the basement that I saw that I put in that truck?

Q. Yes, sir, that's what I'm asking you.

A. No, sir. There wasn't that much of it.

Q. Wasn't that much. Do you know where it went, where the difference went to?

A. No, sir.

Q. Now, are you friendly with Homer Ratliff?

A. Yes, sir.

Q. Didn't Homer Ratliff contribute to your 1976 campaign in some way?

A. Yes, sir.

Q. All right. Now you testified that on November the 23rd you say Homer Ratliff come in your office?

A. Yes, sir.

Q. And immediately you turned around and put him in touch with the FBI; isn't that right?

A. Yes, sir.

Q. Were you trying to help Homer out in some way?

A. No, sir. He was fixing to tell me something that I didn't want to hear.

Q. Sheriff Leonard, let me refer you to the transcripts and the tapes that were played here today.

A. Okay, sir.

Q. Those transcripts that we looked at, those are your opinion of what those tapes indicate, aren't they?

A. Yes, sir.

Q. I think Mr. Rish pointed out several places where the transcript itself didn't really seem to match up with the tape and I think it was on Page 10 where we are talking about State Road 29 or 129, Page 12, Page 13; is that right?

A. That was the right page, yes, sir.

Q. All right. Now, Sheriff Leonard, do you not trust the Florida Department of Criminal Law Enforcement?

A. Yes, sir. I trust them.

Q. Did you in 1976 have faith and trust in their ability to handle and prosecute criminal cases?

A. Do what, Mr. Nutter?

Q. Did you have faith in their ability to handle and prosecute and investigate criminal cases in 1976?

A. All the faith in the world.

Q. All right. How about the State Attorney's office there, did you not trust the State Attorney's office in 1976?

A. Yes, sir, I trusted them.

Q. All right. Sheriff, were you aware that Special Agent Ramsey had been investigating officials in your county and Columbia County for a period of time?

A. Was I aware of it?

Q. Yes, sir.

A. No, sir.

MR. NUTTER: May I have a moment, Your Honor?

JUSTICE ENGLAND: Yes.

(Short pause.)

MR. NUTTER: I have no further questions.

JUSTICE ENGLAND: Mr. Rish.

REDIRECT EXAMINATION

BY REPRESENTATIVE RISH:

Q. Sheriff Leonard, I believe they asked you if you knew Fred Morrison; is that correct?

A. Yes, sir.

Q. You do know Fred Morrison?

A. Yes, sir.

Q. Where does he work?

A. He works for the—he did work for the Public Service Commission.

Q. Do you know who he works for now?

A. I think he's self-employed, runs a nursery.

Q. Where is that?

A. Just south of McAlpin, Florida.

Q. South of where?

A. McAlpin, Florida.

Q. During your tenure as Sheriff, have you ever had occasion to have any problems with Fred Morrison or any of his family?

A. I arrested his son one time.

Q. For what?

A. Shooting up a man's car.

Q. Who made the first contact regarding the disposition or sale of any marijuana, was it you to Mr. Smith or Mr. Lee or was it Mr. Lee and Mr. Smith to you?

A. Mr. Lee and Mr. Smith to me.

Q. Counsel asked you on cross if you knew if Sam Smith ever had possession of any marijuana, of this marijuana; you were very careful in your answer and I don't know what the answer is, but did you know him ever having possession of any marijuana?

A. No, sir.

Q. All right. When Poss Lee showed up at the jail and said, "I have the destruction order", had you ever talked to Poss Lee about bringing a destruction order to the jail on that occasion?

A. No, sir.

Q. Had you talked to Sam Smith about whoever came had to bring the destruction order with them?

A. Yes, sir.

Q. Did you have reason to believe that the paper that Poss Lee had was anything other than a destruction order the day he came?

A. I thought it was.

Q. All right. Was Poss Lee in fact tried on these marijuana charges?

A. Yes, sir.

Q. Was he convicted?

A. Yes, sir.

Q. And sentenced?

A. Yes, sir.

Q. And Judge Sam Smith was also convicted on this same set of circumstances?

A. Yes, sir.

Q. Thank you.

REPRESENTATIVE RISH: No further questions.

JUSTICE ENGLAND: Anything further, Mr. Nutter?

MR. NUTTER: Nothing further, Your Honor.

JUSTICE ENGLAND: Senators, any questions? Senator Scarborough.

EXAMINATION

BY SENATOR SCARBOROUGH:

Q. Mr. Chief Justice, I would like to ask Sheriff Leonard just a few questions, if I may.

Sheriff Leonard, I want to establish in my mind the scenario, that is the time frames of these conversations that took place. The first, as I recall from the previous tape, was a con-

versation you had with Judge Smith when he made the proposition to you about getting some marijuana out of the jail. What was that approximate time and date?

A. The first tape, sir?

Q. Yes, sir.

A. That was on the 10th of September.

Q. All right. That's '76?

A. Yes, sir.

Q. Is that the conversation in which you told him that you would think it over?

A. No, sir.

Q. I think it was. The very first conversation, you didn't tell him yes you would?

A. Pardon me, sir. I might be misunderstanding you. If you're asking me on the 10th of September, I believe—

Q. That's the date you had the first conversation with Judge Smith in regard to the illegal disposition of marijuana?

A. No, sir. I misunderstood you. I thought you meant the first one that was taped. No, sir.

Q. All right. No, sir. The date of your first initial face-to-face conversation with Judge Smith when he made the proposition to you about getting the marijuana out from wherever he had it, was that September the 10th?

A. No, sir. That was back in, I believe it was around the first of August or latter part of September—July, I'm sorry.

Q. We'll just say August the 1st. All right. Now on this August the 1st date, is that the date that you said to Judge Smith after he made this proposition that you would think it over?

A. Yes, sir.

Q. That's August the 1st, approximately, 19—

A. Somewhere around there, yes, sir.

Q. Then in trying to keep up, Sheriff Leonard, with the conversations, my recollection is from the testimony today that the second face-to-face confrontation you had was with Possum Lee when he handed you or showed you or had rolled up in a piece of paper an order for disposition of marijuana; is that correct? Is that the second face-to-face conversation?

A. With Poss?

Q. With anybody?

A. No, sir.

Q. What was the second one?

A. The second one that I dealt with was Judge Smith on the 10th.

Q. The 10th of—

A. September.

Q. September?

A. Yes, sir.

Q. I don't recall the nature of that conversation from your testimony. Would it be possible for you just to repeat that for me?

A. May I correct you just a little bit?

Q. Sure.

A. The first one we had, Judge Smith and I had, was in my office. The next one I had—the next time I spoke to Judge Smith was in the hallway. And then the next one I had face-to-face with Judge Smith was on the 10th of September when the conversation was recorded.

Q. All right.

A. Face-to-face conversation. I called him on the 9th but the face-to-face conversation was on the 10th.

Q. You mean from August to September was the time period that you were thinking it over?

A. If you're asking me did I contact Judge Smith in between then, no, sir.

Q. All right. Let me start all over, Sheriff. We're losing one another.

A. Okay, sir.

Q. All I want to know is the date, approximate date, of the time that Judge Smith contacted you about the illegal disposition of marijuana, just the approximate date?

A. Somewhere in the latter part of July or first of August.

Q. Well, we'll just say, for this conversation, first of August, 1976.

A. Okay, sir.

Q. And on that date your remarks to him according to the taped conversation was—or in the evidence this morning was that you would think it over.

A. Yes, sir.

Q. You were going to think it over from August—why didn't you tell him no right then?

A. Sir?

Q. He was a friend of yours, wasn't he?

A. Judge Smith?

Q. Yes, sir.

A. No, sir.

Q. He was not?

A. Well, no more than anyone else, Mr. Scarborough.

Q. All right. Any reason why you wouldn't tell him no at the time?

A. Yes, sir.

Q. What reasons were there?

A. I thought he ought to be caught.

Q. About what?

A. For wanting to fool with marijuana.

Q. You wanted to talk about it some more, is that what you're saying?

A. No, sir, that's not what I'm saying, Mr. Scarborough.

Q. Oh, that you were going to get caught at it?

A. No, sir. I said he ought—he should have got caught.

Q. But anyhow your bottom line decision was to think it over?

A. Yes, sir.

Q. That was on August the 1st. What was the second approximate date of your conversation with Judge Smith in the corridor?

A. The second time I saw him?

Q. Yes, the approximate date.

A. About a week later.

Q. About a week later you were still thinking it over?

A. Yes, sir.

Q. You had made no decision?

A. Right.

Q. All right. Then did you have a subsequent conversation with him before the conversation with Possum Lee?

(Short pause.)

A. Which conversation, Mr. Scarborough?

Q. About marijuana, the disposition of marijuana. Did you talk to him about it any more?

A. Mr. Scarborough, I think you asked me—Poss Lee was the first man that I talked to and then I saw Poss and Judge Smith together and then I saw Judge Smith by himself.

Q. Now you're still thinking it over up to this time?

A. Right.

Q. And then a little later before you had made the decision, which we will talk about in a moment, you met Possum Lee someplace and you said, and your answer is no, isn't that correct?

A. That was on the 15th of September, yes, sir.

Q. The 15th of September?

A. Yes, sir.

Q. On the 15th of September you had from August the 1st until the 15th of September, you were thinking it over and you decided on the 15th or thereabouts in September that you would not get involved; is that correct?

A. That's right, sir.

Q. What was the date of your earliest contact with the FBI?

A. What was the earliest date?

Q. Yes.

A. The first time I talked to Mr. Ramsey about this?

Q. About this, yes.

A. That would have been the 27th of July.

Q. Well, then that would mean that you had talked to the FBI before you told Possum Lee that the answer was no, would it not?

A. That's right.

Q. What prompted you to have a change of heart from thinking it over to contacting the FBI?

A. Because I give a man my word.

Q. What man and what word?

A. When Poss Lee and I first talked, I told him I wouldn't set him up. And it didn't look like I could catch Judge Smith without setting Poss Lee up.

Q. Is that what you are saying, that the purpose now was to set up Judge Smith?

A. Well, Mr. Scarborough, if that's what you call it, yes, sir.

Q. Well, I am asking you. You can answer for me, Sheriff. What is your definition of a set-up?

SENATOR SCARBOROUGH: I will withdraw that question, Your Honor. That may be a very difficult question to answer.

BY SENATOR SCARBOROUGH:

Q. Sheriff, you voluntarily went to the FBI?

A. Yes, sir.

Q. They didn't call you?

A. No, sir.

Q. They didn't write you?

A. No, sir.

Q. Didn't send you a single telegram?

A. No, sir.

Q. You went to them?

A. Yes, sir.

Q. Did they school you on the art of tape recording, give you a few lessons?

A. No, sir.

Q. Did they at any time advise you to always refer to the Judge as Judge while a tape was being made?

A. No, sir.

Q. I was more than curiously interested, Sheriff, about the disposition of the marijuana. And I followed very carefully counselor's questions. As I understood the questions and your answers, the federal government supplied the 1500 pounds of marijuana to be used in this — I won't use the word set-up — in this case, is that correct?

A. That's right, sir.

Q. And they brought it out to an inspection station some place and you went out, as you would do in your official duties, and made the arrest. And on the way to the jail you determined or you were able to find out that the person involved was not a conspirator but actually an FBI agent, is that correct?

A. That's right, sir.

Q. You didn't know that was going to happen prior to that time?

A. Mr. Scarborough, if you are asking me did I know an FBI agent was supposed to be there, the answer was yes, sir. But I didn't know that was an FBI agent until we started to the jail.

Q. But you knew this marijuana was on the way, sooner or later from an FBI agent, to be used in this particular case, is that correct?

A. That's right, sir.

Q. Once it was brought in to — I suppose you have a compound at the jail some place or a parking area or something like that.

A. A parking area, yes, sir.

Q. You parked 1500 pounds of marijuana in the parking area. Is that what I understood this morning?

A. No, sir. We took the 1500 pounds of marijuana off and put it in a room.

Q. Oh, I see. You didn't leave it in the parking area at all?

A. Not the 15th of November, no, sir.

Q. Thank you. Then I understand from the conversations that you went to some favorite lunch counter or coffee place and told everybody that you had 1500 pounds of newly confiscated marijuana.

A. No, sir.

Q. Refresh me on that.

A. That would have been — you are talking about, Mr. Scarborough, that was back on the 20th of September.

Q. That you let it be known that you had a new batch caught, compound, and word got back to Judge Smith, is that what you said?

A. No, sir.

Q. I thought you did.

A. No, sir.

Q. But that's not material, really. Sheriff, when you picked up the load of marijuana that the FBI agent in it, on it or with it, were you certain to a reasonable degree that there were 1500 pounds of the marijuana aboard? Where did we get the figure 1500 pounds from?

A. That's what they told me would be on there.

Q. That's what they told you?

A. Yes, sir.

Q. When you got to the jail, did you weigh it?

A. No, sir.

Q. Is it customary for you to weigh it?

A. I don't have any way to weigh it.

Q. No way to weigh it. You just estimate it?

A. Yes, sir.

Q. You have done this before?

A. Yes, sir.

Q. Are you fairly comfortable with the fact that there was 1500 pounds of marijuana there?

A. I would say it would be real close, Mr. Scarborough.

Q. I am not holding you to the pound, of course, but approximate figures. Now what really has puzzled me is you testified that you saw the 1500 pounds being loaded very meticulously and carefully in a truck and locked and driven to a dump. And the next time you saw it, it all wasn't there. How much would you estimate to be there with what you saw?

A. About 900 pounds.

Q. We're missing 600 pounds, aren't we?

A. Yes, sir.

Q. Do you have any idea where it went?

A. Are you asking me do I have an idea or do I know?

Q. Both.

A. I don't know, sir.

Q. Well, how about the idea?

A. I think someone stole 600 pounds.

Q. Well, that's obvious. Do you have any idea who stole it? We will get through this sooner or later.

A. Yes, sir.

Q. It takes a little time, so be comfortable.

A. Yes, sir.

Q. Do you have any idea who stole it?

A. Not names, no, sir.

Q. Well, how about identities, give me a clue?

A. I couldn't tell you the name.

Q. You really have no idea then?

A. No, sir.

Q. Did anybody follow you to the dump?

A. I don't know, sir.

Q. Well, being a law enforcement officer driving around with 1500 pounds of marijuana in the back of the truck, you looked in the rearview mirror occasionally, didn't you?

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. Did you see anybody?

A. I saw a car back of me.

Q. You didn't have a hole in that pickup? None fell out on the way to the dump, did it?

A. No, sir.

Q. You are sure about that?

A. Guarantee that.

Q. Positive?

A. Positive.

Q. The lock didn't come unlocked on the way to the dump and 600 hundred pounds fall off on the road?

A. No, sir.

Q. That didn't happen?

A. No, sir.

Q. Well, this is my last series of questions, Your Honor. In the back of my mind, Sheriff, I recall either in the newspaper or on television or some place that while you were

testifying in New Orleans that you admitted to changing your testimony. Did that in fact take place?

A. Mr. Scarborough, I don't know what you asked me there.

Q. Well, did you change your testimony in New Orleans that you had given previously in Jacksonville?

A. To the best of my knowledge, no, sir.

Q. Why would that have been reported in the newspaper?

A. If it was, I don't know.

Q. In your opinion, at the first conversation with Judge Smith, not Possum Lee. I understand you had that prior. If when he approached you with this devious scheme, if you had emphatically told him no, you didn't want to hear about it any more, if you did you were going to put him in jail, do you think we would be here today?

A. With me?

Q. Do you think Judge Smith would be in this predicament in the Florida Senate, the Senate of Florida having an impeachment trial here today?

A. Mr. Scarborough, if you asked me would I be here if I had told him no the first time, no, sir. But I don't know about what—if I had told Judge Smith no, I don't know whether he would have gotten someone else or not. I don't know that.

Q. Who could he have gotten in Columbia County or Suwannee County?

A. It wouldn't happen in Suwannee County, no, sir.

Q. It would not have happened?

A. No, sir.

Q. If you told him no right then, that you didn't want to hear any more about it, that it's a violation of the law and everybody is going to get put in jail, it's highly probable that that would have ended the whole affair, is it not?

A. In Suwannee County, yes, sir.

SENATOR SCARBOROUGH: I guess the bottom line is, Sheriff, that we're tempted by temptation. I will hold those comments until we get ready to vote on the final disposition of the Smith case. Thank you, Mr. Chief Justice.

JUSTICE ENGLAND: Senator Vogt.

SENATOR VOGT: I will try to get through as briefly as possible.

EXAMINATION

BY SENATOR VOGT:

Q. I wanted to cover some of the same grounds as perhaps there has been some wrong impressions. From my notes and your answers to questions, you talked to Possum Lee in early July, probably early to mid-July?

A. Yes, sir.

Q. And was that when you told him you didn't want to set him up?

A. Yes, sir.

Q. Did he have reason to believe you would set him up?

A. No, sir.

Q. Did he have reason to believe that you would set up Judge Smith?

A. At that time?

Q. Yes, sir.

A. No, sir.

Q. Why did you feel it necessary to give him your word you wouldn't set him up?

A. Because he told me he would tell me something if I wouldn't set him up.

Q. So then you talked to the FBI on July 27th?

A. That's right, sir.

Q. Which was roughly ten days to two weeks later?

A. Yes, sir.

Q. And did you not tell the FBI at that time that you wouldn't do anything until after the election because people would think it was politically motivated?

A. That's right, sir.

Q. So rather than trying to decide if you were going to do anything, one of your motives was not to do anything until after the primary election in September?

A. That's right.

Q. So when you talked to Lee and Smith about the first of August, you told them you would think it over, is that correct?

A. Yes, sir.

Q. And then my notes reflect the conflicting statements. You talked to Possum Lee sometime around the 15th or the 17th. I'm not sure which, and you told him you were not interested?

A. That would have been the 15th of September, Mr. Vogt.

Q. And that was after you had won your primary?

A. Yes, sir.

Q. And you told Possum Lee that you were not interested in the deal?

A. That's right, sir.

Q. And you said earlier that he made some comment about you can get all of them or something like that or what did you say?

A. I said that he made the statement, "You should get them all."

Q. "You should get them all." What did he mean by that?

A. I kind of think he knew what was going to happen.

Q. Wasn't he worried about himself?

A. No, sir, I don't guess.

Q. But he since has been tried and convicted on marijuana charges?

A. On a conspiracy, yes, sir.

Q. On this same incident?

A. Yes, sir.

Q. From around September 20th, you spread the story about the marijuana being in the parking lot?

A. Yes, sir.

Q. And then on September 22nd, I have a conflict. Respondent's attorney — well, when you first — when the Board of Managers — I have that you called the Judge on September 22nd and you told him that you had changed your mind and you were interested?

A. No, sir.

Q. I have got the wrong date then. You didn't tell him that on September 22nd?

A. No, sir. I think, Senator Vogt, what you have is I called him on the 22nd but marijuana wasn't even mentioned.

Q. Was it September 23rd that Homer Ratliff, came to your office, a Friday?

A. No, sir, that was November 23rd.

Q. One other thing. If Chief Deputy Beach picked you up outside the dump, he followed you out there and picked you up, then did he take you back afterwards?

A. He carried me back afterwards, yes, sir.

Q. Did he know what was going on?

A. Yes, sir.

SENATOR VOGT: Thank you.

JUSTICE ENGLAND: Any further questions? Senator Lewis I believe is on the speaker.

EXAMINATION

BY SENATOR LEWIS:

Q. Just as a matter of curiosity, when you heard the tapes, you mention that Judge Smith said he had a source to get rid of the marijuana down in Sarasota. Did anybody from FDCLE or the FBI ever follow up on that one? That seemed to me to be a rather important place to follow through as well. Do you know whether they followed through?

A. No, sir.

SENATOR VOGT: That seems to be awfully interesting as well.

JUSTICE ENGLAND: Senator Barron?

EXAMINATION

BY SENATOR BARRON:

Q. Yes, if I may, Judge. I have the same kind of question that Senator Lewis has raised. And I'm not sure that it has anything to do with the relevancy of these particular proceedings. But we have gotten outside relevancy from time to time.

I am having trouble following those dates, too. It looks like, frankly, it looks to me like there might be a little selective prosecution going on. That doesn't make whoever committed that crime right. But, as I understood your testimony or the testimony earlier on this morning from Sheriff McCallister, Poss Lee went to him. He came to you and you told him early on. And I can't remember all these dates, that you didn't want to have anything to do with it.

He said he thought more of you for that. Are you aware of that testimony?

A. Do what, Senator?

Q. When Sheriff McCallister went to you, didn't he go to you at the suggestion of Poss Lee or did he ever go to you about this?

A. He called me and I went to see him.

Q. Right.

A. Yes, sir.

Q. And was that in August or September or when was that, do you recall?

A. That would have been the 17th of September.

Q. That was after the election?

A. Yes, sir.

Q. And then the first tape that you had with the Judge was out at his house talking about the football game and that kind of thing?

A. The first tape?

Q. Yes, sir.

A. Yes, sir, that you heard, yes, sir.

Q. Were there others that we didn't hear?

A. Yes, it had just been phone calls. It wouldn't have been face-to-face conversations.

Q. And then it seems to me that you had a perfect setup with him. You talked about you had the marijuana at that time. It was down at the jail. You had to keep some of it out of a 1,000 pounds, as I recall, or some 1200 pounds. And you had to have some to burn and some to give to him. And I thought you had a total arrangement then with him. Why didn't you carry that one out or did you?

A. In September?

Q. Yes, sir. The result of the first tape, you went and talked with the Sheriff knowing at that time that you would have to be a witness at subsequent proceedings if he told you the right thing on the tape. And it seems to me at that time you had pretty well—I mean, you went and talked to the Judge, you had the same thing that you got in the subsequent tape. What happened to the follow-up as a result of the first taped conversation in making the arrest, if any? Why didn't you or just what happened?

See, you have testified, Sheriff, and one on one, one question at the time. I know it's clear in your mind and I'm sure it's clear in the attorneys' minds. But it's a little hard for me to follow. Why didn't you once you got him on tape at the football game discussion and the amounts and the fact that he was going to take it to South Florida, what happened as a result of that? Did you follow up with that marijuana and make an arrest? If not, why? I'm just curious to know.

A. Senator, I will tell you the best I can.

Q. All right, sir.

A. I had gave Poss Lee my word that I wouldn't set him up. And Judge Smith sent Poss Lee to pick the marijuana up.

Q. That was the one where he brought the destruction order and he was going to pick it up. Was it then that you decided not to do it?

A. Not deal with Poss, no, sir.

Q. That's when you decided—see, you had a destruction order for the first marijuana. You had the whole set-up, the amount of money and all of that. Then you decided if you did that, that you would also catch Poss Lee. Is that the reason you didn't do that one?

A. Yes, sir.

Q. Now another thing that puzzles me is that the load of marijuana that you got and parked down at the jail and went down and told at the cafe that it was down there, you didn't really expect Judge Smith to go down there or somebody to go down there and steal it from the jailhouse, did you?

A. Where it was parked at, yes, sir, someone could have tried it.

Q. Then on the last one where you took it out and put the antenna, the tracking antenna in the bag, was it placed in such a way—this might explain the loss of the 500 pounds, whatever it was—so that somebody unloading it could see the antenna or the radio that you put in the bag or might feel it or something?

A. No, sir.

Q. It was pretty well concealed?

A. Yes, sir.

Q. Now the other matter of interest to me is that once you left the dump and was picked up by your chief deputy, you went and got some coffee and you went on home?

A. Yes, sir.

Q. Why didn't you go back with the FDCLE or the FBI, whoever was going to track it, just as a matter of interest, and see what happened to it?

A. Because my jurisdiction quits at the Suwannee River. I didn't have any business down there, Senator.

Q. Even down there where you left it at the dump?

A. At the dump?

Q. Yes, sir.

A. No, sir, because I wanted to be saw uptown.

Q. That was a part of the way you were handling the case?

A. Yes, sir.

Q. Now do you know—I guess it's a mystery that will never be told. If it is, if the Managers will tell me, I won't pursue it. But do you know whether or not he did go back and get it? Have you found out in the course of your business as the Sheriff of that county whether or not the Judge went down and picked it up or who did pick it up?

A. The only thing I know, Senator, is the names that were told to me.

Q. All right, sir, tell us. We have been hearing a lot of hearsay.

A. I can state who stood trial, if that will help you.

Q. Anything will help. I don't know why it's such a mystery. Just tell me who came and got it, if you know?

A. Well, Ethridge, Brantley, Lee and Smith, I'm sorry, if I embarrassed anyone by Brantley, it was Bradley. I'm sorry.

SENATOR BRANTLEY: I promise you, Judge, I ain't got the marijuana.

JUSTICE ENGLAND: I recognize Senator Brantley.

BY SENATOR BARRON:

Q. Understand, Sheriff, I haven't followed these facts because we shouldn't try to know anything until you got here

about the case. So all those people were arrested as a result of somebody picking up that marijuana there that night?

A. Yes, sir.

REPRESENTATIVE RISH: Judge, we can stipulate that there were three people that went and picked up the marijuana. Sam Smith did not go. Mr. Ratliff, who was here this morning, did go. A man named Mr. Bradley went and a third fellow which is not involved.

JUSTICE ENGLAND: Thank you, Mr. Rish.

REPRESENTATIVE RISH: The man wouldn't tell us this morning on the stand. So I will tell you.

SENATOR BARRON: Okay. I guess we're going to guess whether they found the key and all that.

JUSTICE ENGLAND: Senator Wilson?

EXAMINATION

BY SENATOR WILSON:

Q. Yes, a couple of questions, Sheriff. You may have answered this but I don't seem to have it in my notes. The time that all of this was going on, roughly from July until November of '76, what was the occupation of this guy named Poss Lee?

A. He was an investigator for the Public Defender's Office.

Q. Full time?

A. Yes, ma'am. He had the grassing business on the side.

Q. Would you clear up for me then the question that was asked about him supposedly having a shotgun and, quote, "Working for you" or helping you or whatever in August. Was he working as a deputy sheriff also or what?

A. No, ma'am. Senator, I can tell you what Mr. Nutter was referring to. It was a fellow holed up in a house and he had shot up through the house. And I went up to throw a gas canister in that house. And a news photographer took a picture of Poss Lee leaning up on a patrol car with a shotgun, if that will help you any. He wasn't working for the Sheriff's Department at that time, no, ma'am.

Q. He just happened to be along for the ride?

A. Yes, ma'am.

Q. In the conversation that you first had with Poss in July in your car after this Scotty's Restaurant incident, I have a quote here where you said that he said to you that you had marijuana and Judge Smith could use it and you replied, "How could I trust Judge Smith?" And then apparently he has described through this conversation that Judge Smith would give you this destruction order and so forth. And then he said if Smith didn't sign the order he would get another judge to sign an order, is that correct?

A. That's correct, ma'am.

Q. So this July—and I believe you also testified that this conversation took place after you had qualified for office I think?

A. Yes, ma'am.

Q. So that was probably late July, whenever those qualifying dates are. But that was your first contact with anyone that approached you about getting involved in illegal trafficking of marijuana?

A. Yes, ma'am.

Q. And although Judge Smith's name was mentioned, it was implied by this answer, if I am reading correctly, that other judges would sign such order, is that correct? In other words, Judge Smith, apparently, although any other judges weren't mentioned by name—weren't other judges implicated by this statement?

A. Senator Wilson, that's what Poss said.

Q. That's what I mean. I am strictly talking about this conversation.

A. Yes, ma'am.

Q. So did you get the feeling that—I'm working on the assumption, Sheriff, that Poss Lee is a close, close, personal friend of yours?

A. He was.

Q. Pardon?

A. He was.

Q. Someone who you had a great deal of affection and loyalty for. Am I correct? I mean, can I make that assumption so that I understand your relationship here as far as this conversation goes?

A. Senator Wilson, I would be loyal to anyone I gave my word to. That's all.

Q. Were you surprised that he would approach you about this sort of thing? I mean, were you shocked? Did you worry about it? What was your reaction?

A. No, it didn't surprise me.

Q. Did you get the impression that he was approaching you on behalf of Judge Smith as opposed to just on behalf of the deal in general?

A. I felt it was on behalf of Judge Smith.

Q. Specifically Judge Smith?

A. Yes, ma'am.

Q. Well, then, how did you interpret the fact that if Judge Smith had sent him to set the deal up and you said the Judge might not follow through with signing it and then he could produce other judges who would, that confuses me a little bit. Could you help me understand that? I'm trying to get you to help me understand how you arrived at the conclusion that he was approaching you as a direct agent of Judge Smith specifically as opposed to the general deal or any other judges or any other politicians, for that matter.

A. Senator Wilson, the only way I would know to clarify it—that you would have to know the people over there, but I knew that Poss Lee wasn't close to any of the judges.

Q. All right. Just a couple of other things. I want to fill in some blanks of things that puzzle me. Before Poss approached you with this—you were in the car and he approached you with this marijuana deal, he said, if I understood you, "I will tell you something if you won't set me up." So that occurred before he actually went into this conversation?

A. Yes, ma'am.

Q. So that was the predicate. Then following the—I am trying to follow the dates. That was in the latter part of July. And then a few days later you went to see the FBI and there's been a big issue made about not going to the State's Attorney or FDCLE but instead to someone who is located in Tallahassee.

Why didn't you go immediately to the ones that would be the most convenient logically next door?

A. Because, Senator Wilson, it would have been unfair to any circuit judge sitting in that circuit or any State's attorney sitting in that circuit to handle something like that.

Q. Then on the September 10th tape that Senator Barron referred to about you did have a deal made or agreed upon with the Judge. And then five days passed and the person that showed up with the destruction order was Poss Lee. So because of your having given your word to him, you decided to terminate the deal right then because you didn't want Poss Lee to be involved in it, is that correct? Am I interpreting you correctly in your actions when you said that you changed your mind and you weren't going to do it?

A. Yes, ma'am.

Q. But he showed up, apparently, on the 15th with that paper in hand to be the one to get the marijuana from the jail?

A. Yes, ma'am.

Q. You said that he said that you should get them all?

A. Right.

Q. Could he have said you could have it all?

A. Ma'am?

Q. Could he have said to you you could have it all?

A. No, ma'am.

Q. So you think he meant you should—in other words, you felt he knew you were involved in helping to get these people caught?

A. No, ma'am. But I don't think it would surprise Poss if I did catch them, no ma'am.

Q. Okay. That was on September 15th. Then on September 17th—so now you have told him you have changed your mind, you are not going to do it?

A. Yes, ma'am.

Q. September 17th, two days later the former sheriff talked with you?

A. Yes, ma'am.

Q. And that same day you went to see FBI Agent Ramsey and told him that you didn't want to be involved anymore?

A. That's right.

Q. And then he told you about obstruction of justice and that you better go take a car and load it up in Tallahassee and come back and stuff?

A. Ma'am?

Q. He told you all about obstruction of justice and you took your car or your truck or something to Tallahassee or somebody did. Anyway, you ended up with a truck load of marijuana parked supposedly in the backyard of the jail because he wouldn't let you off the hook, right?

A. No, ma'am.

Q. I mean, isn't that a correct assumption?

A. That's incorrect, yes, ma'am.

Q. Well, wait a minute. You told him you didn't want to be directly involved anymore?

A. That's right.

Q. And that was on September 17th. And he explained to you about that if you didn't stay involved it would be an obstruction of justice, is that right?

A. Yes.

Q. And then my note says that you loaded your truck or he asked you to take your truck to Tallahassee and bring it back to Live Oak, a load, park it in the parking lot at the jail. I have that dated the same conversation. Is that accurate?

A. The facts are accurate. It's just how you interpret it.

Q. Well, that's what I am trying to get you to help me do. Because, see, you walked in and you told him you didn't want to be involved anymore. But you walk out involved. So, apparently, you didn't accomplish your purpose. You went to him to tell him you didn't want to be involved, right?

A. They came to me, Senator Wilson. They came to me.

Q. They came to you that same afternoon?

A. I don't know—

Q. The afternoon that you talked to the former sheriff?

A. It was on the 17th. Senator Wilson, that was after I talked to Mr. Duke McCallister.

Q. So it's that same afternoon and they came to your office?

A. Right.

Q. What prompted them to come to your office on that particular day?

A. Well, I think they was in town anyhow. I met with them.

Q. Well, I'm curious as to why a week passes between the tape that was taken on the 10th and then you have no contact with the FBI between then. And we all know the Judge was going to go down and set up the buy, pull the tape. He went to Tampa that weekend or wherever he was going, Sarasota.

But, anyway, there's a whole week there. It seems to me this is a pretty big deal. And all the FBI agents just have nothing better to do and you had no contact from them since then?

A. Since the tape?

Q. Right.

A. No, ma'am.

Q. But they didn't make a special trip, they were just passing by?

A. No, ma'am. I imagine it was a special trip over there.

Q. All right. I just want to make sure I am reading you right. Okay. That's on the 17th. So apparently the truck with the marijuana in it is behind the jail and you tell the world, the Live Oak world, on the 20th, 21st and 22nd that all this marijuana is sitting there. Then you say that on September 22nd, which is the last of the three days, you contacted Judge Smith. I think you said earlier that you were hoping Judge Smith would contact you if you put out the word. And then you said you contacted him on the 22nd. But then you said in answer to, I believe, Senator Barron or Senator Scarborough that marijuana was not mentioned or the marijuana deal was not mentioned in that contact on the 22nd?

A. That's right.

Q. What did you talk about with him?

A. Senator Wilson, he had came by on the 21st and I wasn't in Live Oak. He came by on the 21st and the office told me that Senator—I mean Judge Smith had came by to see me. So, you know, I was hoping that that's what he came by to see me about. So on the 22nd, when I got back I called him and told him that I had heard that he had came by to see me and what about it. He said it wasn't anything, that he was just passing through town and had stopped by on his way to Perry. So that was the 22nd of September tape, or conversation.

Q. The September 22nd contact, since he didn't mention the marijuana, you didn't either?

A. No, ma'am.

Q. And yet that was the purpose of bringing that truck load down, wasn't it?

A. That's right.

Q. Why didn't you mention it? I mean, you went to the trouble to put out the word for three days. You had gone this far. You got him on the phone. I mean, why didn't you mention it to him then? That was obviously the purpose of the whole thing.

A. Senator Wilson, at that time it wasn't a good way to mention it to him.

Q. What do you mean by that?

A. I don't know how to tell you but, you know, you have got to have plenty certain things right before you can mention something. You know, I called the Judge. He said he wasn't wanting to see me. So, I don't know. I don't know how to answer you, Senator, your question, I honestly don't.

Q. Well, that's a great big question mark in this scheme of things, that particular conversation, in my mind. And there's no way you can help throw any more light on that?

A. I'm sorry, I couldn't.

Q. Then I will try to be brief. I do have about one more thing. What did Chief Deputy Beach die of?

A. A heart attack.

Q. Would you tell me what and how you knew that Homer Ratliff was fixing to tell you something you didn't want to hear? I mean, how do you know it was something you didn't want to hear? Explain that to me, please.

A. Well, he came into the office crying and he started talking about the marijuana. And I told him I didn't want to hear anything about it.

Q. What was Poss Lee's sentence?

A. I believe he got three, I think.

Q. Did he serve or probation?

A. It's on appeal.

JUSTICE ENGLAND: Senators, I might just say at this time, we have passed our break time. I thought we would complete this witness with the questions you have and then take a little lunch break before coming back to hear the balance of the one witness remaining for the State that the Managers are going to present. That would be in keeping with your earlier decision. Senator Thomas?

EXAMINATION

BY SENATOR PAT THOMAS:

Q. Just a brief question. Sheriff, in response to Senator Scarborough's question, I think the date was July 27th, he asked why you didn't make immediate response. I believe your question was or answer was that he ought to be caught, if I am correct on that date. That was your answer, anyway, as to why you didn't—what had been the relationship between those cases that you had brought before the Circuit Court prior to this confrontation? Had you felt that the Judge had been less than fair with those cases that you had made arrest on and brought before this court?

A. No, sir. I would say that Judge Smith run the best court of anyone in the circuit.

Q. Had the two of you had no confrontations? Was the beginning of a first for you?

A. I have nothing against Judge Smith.

Q. After more than two years, the two federal court trials and this impeachment and I guess other appeals, do you still feel as determined that he ought to be caught? I know it's—

A. I wish someone else had of did it.

Q. Sir?

A. I wish someone else had of did it.

JUSTICE ENGLAND: Senator Holloway.

EXAMINATION

BY SENATOR HOLLOWAY:

Q. Yes. Sheriff, referring to this second tape that we heard on Page 5. Why are you growing such lousy—"If it's just stuff like you grow here in Suwannee County, grow it, and know what you are doing, it's damn sorry stuff. You can get it a buck and a half a pound for it." And, of course, your response was that it was good stuff. Why are ya'll growing such lousy damn stuff over there?

JUSTICE ENGLAND: That's a rhetorical question, I believe. Any other questions? Senator Dunn?

EXAMINATION

BY SENATOR DUNN:

Q. Sheriff, I would like to ask just a couple of questions. Back in July of 1976 you were running for election. And I assume sometime in the middle part of July, the three candidates who were running against you and yourself had all qualified for that election, is that correct?

A. Yes, sir.

Q. Now at that time Poss Lee had been and even today is considered by you to be a lifelong friend, is that correct?

A. Senator Dunn, I perhaps probably have more feeling for him than he does for me right now.

Q. That's quite understandable. But as of that time he was certainly a very close, lifelong friend of yours and you had known each other since boyhood, is that right?

A. That's right.

Q. As a matter of fact, was he not a campaign supporter of yours?

A. In '76?

Q. Yes, sir.

A. No, sir.

Q. He opposed a family relative of his—he supported a family relative of his I think?

A. I would think so, sir.

Q. Pardon, sir?

A. I would think so.

Q. Now you had a meeting which date I think is somewhat uncertain, I assume to be sometime in the middle part of July, at Scotty's. And after the meeting with Poss at Scotty's, you and he went out and got into your Sheriff's car, is that correct?

A. Yes, sir.

Q. Now who was the first one of you that brought up the subject of marijuana?

A. Poss.

Q. What if anything did he say as he first got into that subject?

A. We were just talking, Senator. And he told me that he would tell me—we had been talking about the election. And he told me he would tell me something if I wouldn't set him up.

Q. Now prior to him making that statement, did he make some statement about you needing some money for your reelection, for the campaign or whatever?

A. I don't think so, not before he made that, no, sir.

Q. Was that statement made during your conversation, the first one in July?

A. Yes, sir.

Q. So the first thing he said to you was that he would tell you something if you wouldn't—what was your word?

A. Set him up.

Q. —set him up. And you agreed not to set him up?

A. Yes, sir.

Q. That's when he told you about the marijuana situation?

A. Yes, sir.

Q. Now since that meeting, sometime thereafter, you in obedience to your duties as a law enforcement officer reported the incident to the FBI, did you not?

A. Yes, sir.

Q. You reported the incident to the Florida Department of Law Enforcement, did you not?

A. Yes, sir.

Q. You reported the incident to the State Attorney in your circuit? Did you not?

A. Yes, sir.

Q. And you had numerous meetings with the gentlemen during the course of about three or four months, did you not?

A. Yes, sir.

Q. During the course of these meetings, the question I assume arose concerning the strategem to be used—to use your term—catch the Judge? In other words, you talked to the

State Attorney occasionally, the Florida Department of Law Enforcement, but most of the time with the FBI about the stratagem or plan to apprehend the person involved in the marijuana conspiracy or persons involved in that conspiracy?

A. That's right, sir.

Q. Now at any time, from the time in July until the time of the arrest of the Sheriff was made, did you ever tell your close friends that he was under investigation, that you had told the FDCLE or the FBI or any other law enforcement officer that they may be investigating him or may be investigating Sam Smith or anybody else? Did you ever tell him that?

A. No, sir.

SENATOR DUNN: No further questions.

JUSTICE ENGLAND: Any other questions from the floor? Senator Brantley.

SENATOR BRANTLEY: Mr. Justice, I don't know whether this is in order or not. But I think it ought to be said because this morning you admonished the Senators that a great deal could be learned and felt from the expression of the witnesses rather than simply listening to them. And I don't know what the outcome of this is going to be. But I have got to tell you, I hope we have got 66 more sheriffs in Florida like this sheriff. And I would like to ask him a question.

EXAMINATION

BY SENATOR BRANTLEY:

Q. Did you see the movie Walking Tall?

A. No, sir.

Q. You ought to see that. You ought to consider getting yourself a stick.

A. No, sir.

JUSTICE ENGLAND: Any further questions?

(No response.)

JUSTICE ENGLAND: Seeing none, Counsel for both sides, do you see any reason this witness cannot be excused?

REPRESENTATIVE RISH: No, sir, we don't.

MR. CACCIATORE: He may be excused, Your Honor.

REPRESENTATIVE RISH: Judge, may I inquire of the game plan on the time at this time?

JUSTICE ENGLAND: Yes. Let's excuse the witness. Thank you, Sheriff.

(Witness excused.)

JUSTICE ENGLAND: Fairly in keeping with what we had planned before, I understand that the remaining witness for the House Board of Managers is a short witness of 15 minutes to perhaps half an hour and that will be taken tonight. I would like at this time—

SENATOR BRANTLEY: How long is it going to take?

REPRESENTATIVE RISH: 15, 20 minutes.

SENATOR BRANTLEY: Mr. Justice?

JUSTICE ENGLAND: Senator Brantley?

SENATOR BRANTLEY: With your approval, could we get an expression from the Senate as to going straight through on this witness on the representation that the House Man-

agers represent it will only take 15 or 20 minutes. And then, of course, we can break for the evening because the witnesses on the part of the defense under no circumstances could be here before tomorrow morning.

JUSTICE ENGLAND: I was planning to get that witness. Fine. I will take the sense of the Senate. We have to ask Mr. Cacciatore also, what that might involve on his times. I was thinking of a break of no more than 10 minutes. I thought you have been extremely patient but, if not, with the sense of the house no objection?

(No response.)

SENATOR BRANTLEY: Mr. Cacciatore requests a 10-minute break.

JUSTICE ENGLAND: Let's take a limited break. If you are back at 6:00 o'clock, we will be through well before 7:00. That's a 10-minute break. The Senate will be in recess.

Oh, sorry, I missed it by 10 minutes. 20 minutes until 6:00. I'm sorry.

The Senate recessed at 5:40 p.m. and was called to order at 5:55 p.m.

JUSTICE ENGLAND: Senators, if you all will take your seats, please. All Senators will take their seats and indicate their presence.

A quorum present—36:

Barron	Gordon	McClain	Spicola
Brantley	Gorman	Myers	Thomas, Jon
Chamberlin	Graham	Peterson	Thomas, Pat
Childers, Don	Hair	Plante	Tobiassen
Childers, W. D.	Henderson	Poston	Trask
Dunn	Holloway	Renick	Vogt
Firestone	Johnston	Scarborough	Ware
Gallen	Lewis	Scott	Williamson
Glisson	MacKay	Skinner	Wilson

SECRETARY: A quorum is present, Mr. Chief Justice.

JUSTICE ENGLAND: Senators, I think that we are ready to proceed. Mr. Glick, for the House Managers, you can call your next witness, please.

MR. GLICK: The Managers call Gary M. Ramsey.

WHEREUPON,

GARY M. RAMSEY

was called as a witness, having been first duly sworn, was examined and testified as follows:

JUSTICE ENGLAND: Senators, before the managers begin their interrogation of Agent Ramsey I want to caution you that there are ongoing investigations that he is involved with and that members of his department are involved with and they have asked us, asked the Managers, asked the Respondent, that they do not exceed the scope of the matters presently before us and get into those investigations. There has been a stipulation to that effect by all of the parties. I want to caution you because in your questioning it may be that you touch on matters which are of continuing concern and at that point Agent Ramsey may not be able to answer your questions and will so state. I want to tell you that now so you don't think there is any deliberate evasion of your questions; it's just the possibility against which we want to be protected.

Mr. Glick, your witness.

DIRECT EXAMINATION

BY MR. GLICK:

Q. Please state your name.

A. Gary Ramsey.

Q. Where do you live?

A. Tallahassee, Florida.

Q. What is your occupation?

A. Special Agent, Federal Bureau of Investigation.

Q. Mr. Ramsey, do you know Judge Samuel S. Smith?

A. Yes, I do.

Q. In your duties as an FBI agent, have you had occasion to investigate Judge Smith and others in connection with marijuana being obtained from the Suwannee County Jail?

A. Yes, I did.

Q. In this regard, did you have occasion on November 18th, 1976 to have a conversation with Judge Smith in Lake City, Florida?

A. Yes, sir.

Q. Where was that?

A. This was in Judge Smith's chambers in the Columbia County Courthouse in Lake City.

Q. Approximately what time did you get there?

A. It was approximately 8:12 A.M.

Q. What was your purpose for going there?

A. It was to effect the arrest of Judge Smith.

Q. Did Judge Smith make a statement to you?

A. Yes, he did.

Q. How long did it take for you to take that statement from him?

A. Probably an hour and forty-five minutes.

Q. Prior to Judge Smith giving you a statement, did you advise him of his rights?

A. Yes, sir, I did.

Q. Did you read the rights to him?

A. Yes, sir.

Q. I show you Managers' 10. Can you identify this and tell us what it is?

(Witness examines document.)

A. Yes, I can.

Q. All right. Would you tell us what it is, please?

A. It's the interrogation, advice and rights form which I read to Judge Smith on November the 18th.

Q. Did you sign that yourself?

A. Yes, sir, I did.

Q. Did Judge Smith sign it?

A. Yes, he did.

Q. Did he sign it in your presence?

A. Yes.

Q. All right.

MR. GLICK: I offer Managers' Exhibit 10 into evidence at this time.

JUSTICE ENGLAND: Any objection?

MR. CACCIATORE: Your Honor, there may not be but this is the one document that I have not seen. I would like the opportunity to review it, if I may.

JUSTICE ENGLAND: All right.

(Short pause.)

MR. GLICK: May I proceed?

JUSTICE ENGLAND: Mr. Cacciatore, can we proceed with questioning him while you are examining that?

MR. CACCIATORE: Fine.

CONTINUED DIRECT EXAMINATION

BY MR. GLICK:

Q. During the interview of Judge Smith, did he give you any information concerning a contact by Sheriff Robert Leonard during the first part of September 1976?

A. Yes, he did.

Q. What did he tell you about that?

A. He stated that Sheriff Leonard had contacted him the first part of September, about that same year, 1976, and advised him that he had a large amount of marijuana in the jail, in the Suwannee County Jail that he needed to get rid of part of the marijuana to have more room in the evidence room for other evidence. He advised that he had never handled any destruction of marijuana at that time so he advised Sheriff Leonard that he would find out and let him know at a later date.

He stated that he then contacted Virlyn Willis, the Assistant State Attorney for that area, and Mr. Willis advised him that Mr. Willis would submit a petition and then Judge Smith would issue a destruction order to have the marijuana in the jail destroyed.

He advised that sometime later still in the month of September that Sheriff Leonard called him and asked him if he was going to be in Live Oak and he advised Sheriff Leonard that he wasn't but that he would be at Judge Smith's own residence that afternoon.

He advised that Sheriff Leonard came to his residence and at that time, again, Sheriff Leonard advised that he needed to get rid of the marijuana and that he told Sheriff Leonard how he could go about getting rid of the marijuana.

Q. Did he further give you any information concerning a contact with Sheriff Leonard on November 16, 1976?

A. Yes, sir, he did.

Q. What did he tell you about that?

A. He stated that he was in the Suwannee County Courthouse on the afternoon of November the 16th and that his main

purpose in going to the Sheriff's office was because he had prior to this time sentenced a defendant, he couldn't recall the first name but he believed the last name was Smith. He sentenced this Defendant to Florida State Prison system. He had been contacted by Homer Ratliff, a bondsman in the area, who requested an extension of time prior to Smith going—Defendant Smith—going to the prison system. And he said he was contacting Sheriff Leonard to determine if Smith was still in the Suwannee County Jail or whether he had already been transferred to the prison system. And he advised that during his conversation that he did recall Sheriff Leonard did mention one individual having been arrested in a truck containing approximately 2500 pounds of marijuana.

Q. After Judge Smith had given you this information, what happened next?

A. I played a copy of a tape of a meeting between Sheriff Leonard and Judge Smith which was taped on September the 10th, 1976.

Q. Prior to your playing the tape, had you told Judge Smith that you had such a tape in your possession?

A. No, I did not.

Q. Did you play the whole September 10th tape for him?

A. Yes, I did.

Q. After you played that tape, what did you say to Judge Smith and what was his reply?

A. When I finished the tape I advised him that I knew what he had told me earlier had not been the truth and now I would like to go over it again and for him to tell me the truth about the matter. He advised me that he did want to. Then he advised that his first contact was several months prior to September 10, the date that the tape was made, he was contacted by Poss Lee in his office in Lake City.

At this time Lee advised him that there was a large amount of marijuana in the Suwannee County Jail. He asked Judge Smith if he thought it would be possible for he and Judge Smith to get the marijuana from the jail. He also advised that he had been in contact with Sheriff Leonard and Sheriff Leonard was willing to go along with them and obtain the marijuana.

He advised that after discussing this matter with Poss Lee for a while, that he decided that it would be possible for them to obtain the marijuana. He said that he then contacted Virlyn Willis, the Assistant State Attorney for the Third Judicial Circuit, discussed the matter with Mr. Willis. Mr. Willis advised that he thought it would be possible that he could petition Judge Smith for a destruction order and Judge Smith could issue the destruction order which would cover Sheriff Leonard in the disappearance of the marijuana from the Suwannee County Jail.

I asked him at that time if when he and Poss Lee and Mr. Willis were discussing obtaining the marijuana if it was ever stated that this was an illegal act. He, Judge Smith, advised me that he didn't recall it being in those words but he was sure from the conversations that both Lee and Willis and himself knew that they weren't going to put it in their pipes and smoke it, I believe was the term that he used.

He advised that shortly after this time he was contacted by Poss Lee who advised that Sheriff Leonard had backed out and wasn't going along with them.

He stated that he had no other contact on this matter until, which would be the day before the tape of September 10th, which

would be September the 9th, 1976, when he received a call from Sheriff Leonard asking to meet with him. He advised that he told Sheriff Leonard that he would be at his residence on September the 10th of the following day. He advised that Sheriff Leonard came to his residence in Lake City on the following day and at that time they discussed obtaining the marijuana from the jail.

Q. Did he make any mention of there being the discussion of 5,000 pounds of marijuana?

A. Yes. He advised that during the conversation, the main purpose of that meeting was to obtain approximately 500 pounds from the jail. He said that during that conversation that Sheriff Leonard mentioned that they had just confiscated 5000 pounds of marijuana and that he discussed the possibility of obtaining at least 2,000 pounds or more of that 5,000 pounds at a later date.

Q. Did he make any mention of any of his activities in November with respect to marijuana?

A. Yes, he did.

Q. Would you outline those for us?

A. He advised that on November the 16th that he again received a telephone call from Sheriff Leonard who had asked him if he was going to be in Live Oak and that he then went to Live Oak that afternoon and met with Sheriff Leonard in the office, Sheriff's office there. It was at that time that it was discussed and Sheriff Leonard advised that he had just stopped a truck and arrested one individual, the truck containing approximately 2500 pounds of marijuana. And that they discussed obtaining this and it was decided after discussing with Sheriff Leonard that this marijuana would be placed at the Live Oak dump that night between 10:00 and 11:00 o'clock. That there would be a padlock on the back of the truck, that the key to the padlock would be under the floormat in front of the truck which would be left unlocked.

Also during this I discussed and asked him about his—as soon as they entered the office he made the statement that someone prior to that, after the September 10th contact, had come to him and advised him that the Florida Department of Criminal Law Enforcement, Arthur Lawrence, the State Attorney and Sheriff Leonard and myself were trying to set him up. He wanted to be certain that this was not happening.

Q. Go ahead, please.

A. I asked him if this had occurred and he advised that no one had actually contacted him, that the reason that he advised Sheriff Leonard of this was to—in case it was a setup—that it would scare Sheriff Leonard off.

Q. Were there any other mentions of that nature of Judge Smith's activities that they could be construed as being illegal?

A. Yes. I asked him if—at the conclusion of this—if when he discussed this with me and Willis and made the plans and the actions he took if he knew that it was a violation of the law and he said, he made the statement, "Of course, I'm a judge."

Q. Was there any discussion about overt acts?

A. Yes. He advised that because that he didn't do anything after he left Sheriff Leonard's office that day he stated that after he met with them and made the plans concerning the truck at the dump that night that he immediately went to his residence in Lake City, he didn't contact anyone else, he hadn't talked to anyone about the marijuana since that time. He

advised that since he didn't do anything after planning this that he didn't feel he could be successfully prosecuted because he didn't commit an overt act after they discussed it. He said that he would probably be ruined professionally but he didn't feel he could be prosecuted.

Q. Did you ever play the tape of November 16th to him?

A. No, I did not.

Q. Is that the totality of what the Respondent told you about the marijuana scheme?

A. With the exception I asked him a few more questions concerning a conversation that transpired on the first tape, September 10 tape, concerning the individual he mentioned that he would have to go to Sarasota. He told me at that time that there was no man in Sarasota. That his whole intention, both in September and in November, if he could obtain the marijuana was to first get control of the marijuana and then after he had the marijuana in his possession that he would try to locate a buyer, someone to sell the marijuana to.

I also asked him about—he mentioned in the November 16 conversation with Sheriff Leonard that there was a man with \$100,000 that came to his house in September and Sheriff Leonard had backed out. He advised that there was no one. Again, his intention was just to obtain the marijuana, he didn't have a buyer at that time.

Q. So according to Judge Smith, he outlined that on November the 16th after his discussion with Sheriff Leonard he went directly home. Did he explain his understanding about what was going to happen to the marijuana?

A. I asked him about that and he said he didn't know what happened to it because he contacted no one after he left Sheriff Leonard's office. So he had no idea of what happened to it after that point.

Q. All right. During your conversation with Judge Smith that day, what was his demeanor?

A. When we first came in and placed him under arrest and began the interview he was—he appeared to be calm, I would say normal is my experience with him. He remained like this, in fact he transacted some business while we were in there, signed some papers, a bailiff came in and out a couple of times. Then when we played the tape, during the playing of the tape of the September 10 tape, he became emotional. During the playing of the tape tears came to his eyes and it changed during the first part of the interview after completion of the tape and then gradually as time wore on he regained his composure and again was back fairly calm when the interview was terminated.

Q. So am I correct in characterizing that his first statement to you and his second statement to you changed after playing the tape?

A. Yes.

Q. In connection with your investigation were you at or near the Live Oak County landfill on the night of November 16, 1976?

A. Yes, I was.

Q. Was this pursuant to a surveillance, having to do with this investigation?

A. Yes, sir.

Q. What was the weather like, the visibility on that night?

A. It was very dark, foggy, it rained intermittently during the entire night and visibility was very poor.

Q. What was the exact purpose of the surveillance?

A. The surveillance was to surveil the truck, the rental truck containing the marijuana, located at the dump, and to follow anyone who came to pick up that marijuana.

Q. Were you in a position to observe anyone entering or leaving the landfill?

A. Entering on the road, yes, sir.

Q. Did someone come to retrieve the marijuana?

A. Yes, sir, they did.

Q. Were they in vehicles or on foot?

A. Yes. I observed approximately at 10:40 p.m. that night, I observed two vehicles pass me on the road, drive directly in front of me, they were driving real slow, a lot slower than the normal traffic that was going by that night. There was a Volkswagen and a truck, a pickup truck. The vehicles continued on down and turned into the landfill road and drove down into the landfill.

A little after 11:00 o'clock I observed the same two vehicles as they turned back on to the highway, this would be Highway 129, and they turned north towards Live Oak.

Q. Were these vehicles followed?

A. Yes, they were.

Q. Was anyone—was there any cause to pursue one of these vehicles as opposed to another?

A. Yes, we pursued the pickup truck because as it passed the lights shined into it and I could observe the bundles in the truck which appeared to be the marijuana, the same size, shape of the marijuana bundles that were placed into the rental truck.

Q. You could identify those as the same marijuana bundles that had been placed into the rental truck?

A. I could identify them as the same shape. You could see through the glass on the side of the window and the bundles appeared to be the same size and type.

Q. Was anyone ultimately apprehended?

A. Yes, they were.

Q. Who was it?

A. Richard Eugene Bradley.

Q. Now changing. Did you have an occasion to interview Homer Ratliff on November 23rd, 1976?

A. Yes, sir, I did.

Q. What was his demeanor?

A. When he first arrived to the motel, the motel room where I was staying, he was very emotionally upset, he started to talk to me and he began crying. It was probably between 10 or 15 minutes before he really stopped crying, settled down enough so I could find out why he had come to talk to me.

Q. Did he indicate any involvement with some marijuana and Judge Smith?

A. Yes, he did.

Q. Were his comments in the form of an admission or confession?

A. Yes, they were.

Q. What did he say to you that day?

A. He advised that—

MR. CACCIATORE: Excuse me. Your Honor, I assume, again, I have a standing objection to that type of testimony.

JUSTICE ENGLAND: Yes. I think we are still hearing what Agent Ramsey heard at the meeting, not what somebody said to him.

MR. GLICK: Well, the Managers continue to believe that in that Ratliff was a co-conspirator that under the co-conspirator exception to the hearsay rule we can admit that evidence and his statements.

JUSTICE ENGLAND: Well, if that's the basis there is no problem. The co-conspirator rule is an exception to the hearsay rule which is not applicable. So relevant and probative is what we are working with as wide as that may be.

MR. CACCIATORE: I would just like for the record to be clear that I object to this and I think it's improper, Your Honor.

JUSTICE ENGLAND: All right.

MR. GLICK: The Managers continue to maintain that it is both relevant and probative.

BY MR. GLICK:

Q. Did Ratliff indicate he had been involved with obtaining some marijuana?

A. Yes, he did.

Q. What did he tell you about the marijuana, Judge Smith and his involvement?

A. He advised that some time when, he believed in September, 1976, Judge Smith called him into his office in the Columbia County Courthouse and asked him if he knew anyone that could handle some marijuana that he had access to some marijuana and he knew someone could handle it but he wanted to know if Mr. Ratliff knew of anyone.

Mr. Ratliff advised at that time that he did not and he left Judge Smith's office. He advised that he had no other contact with Judge Smith concerning marijuana until on November the 16th, 1976, he advised that he was in Live Oak, Florida, that he received a telephone call from D. C. Berry who was an employee of his, who advised him that there was a man that called his office and it was urgent and to get in touch with him, that he should call this man back. He advised that he waited until he returned to Lake City. He went to his office, to Mr. Ratliff's office where he obtained a telephone number left by the individual calling him. He advised that he didn't know why he didn't make the call at his office. He left there, on the way home he stopped by a 7-Eleven or Minit Market, some type of little store and at this point made a telephone call, called the number.

He advised that the telephone was answered by Judge Smith, that Judge Smith requested that Mr. Ratliff meet him in the parking lot of the Columbia County Courthouse. He stated that he then went to the courthouse where he met with Judge Smith. When he arrived there Judge Smith advised him that he needed him to go to Live Oak that night and pick up some marijuana. He advised that Sheriff Leonard had made the marijuana

available, that he was going to place it in a rental truck, the truck would be located at the Live Oak dump south of Live Oak between 10 and 11. That the back of the truck would be locked with a padlock, that the cab of the truck would be open and that the key to the padlock would be under the floor mat.

He wanted Mr. Ratliff to go get somebody to get a truck to go pick up that marijuana and to hold that marijuana until the following day when Mr. Ratliff was to get back with Judge Smith and they decide what to do with it.

Q. So Ratliff told you that Judge Smith requested him to get some assistance—

MR. CACCIATORE: Your Honor, I object to that. Now the Senators here are all sophisticated people, I don't think it's necessary to go back over and repeat what has been said and I would object.

MR. GLICK: I withdraw the question.

BY MR. GLICK:

Q. Did Ratliff indicate if he had sought help to do as he was instructed by Judge Smith?

A. Yes, he did.

Q. Who did he seek help from?

A. Richard Eugene Bradley.

Q. Was that the same Bradley that was arrested in connection with the truck that was followed that you observed the marijuana in?

A. Yes, it was.

Q. When Bradley was arrested was all of the marijuana recovered?

A. No, it was not.

Q. Do you have an approximation of how much marijuana was recovered?

A. There was somewhere between 1,000 and 1100 pounds recovered.

Q. Did you have any indication as to what happened to the remainder of it?

A. That is part of an ongoing investigation.

Q. All right.

MR. GLICK: If I may have a moment, Mr. Chief Justice.

JUSTICE ENGLAND: Yes.

(Short pause.)

MR. GLICK: I have no further questions at this time. I would like to formally introduce Managers' Exhibit 10.

JUSTICE ENGLAND: You have seen that now, Mr. Cacciatore, is there a problem with it?

MR. CACCIATORE: The only problem, Your Honor, is I have no objection to the admissibility of the document itself. However, I wanted the record to be clear that my lack of objection is not conceding that in fact that is Sam Smith's signature. I have no way to know that. Other than that I have no objection to the admissibility of the document.

JUSTICE ENGLAND: We understand. Thank you.

At this time do you have any questions of this witness?

MR. CACCIATORE: A couple, Your Honor.

(Short pause.)

CROSS EXAMINATION

BY MR. CACCIATORE:

Q. Mr. Ramsey, how long have you been with the FBI?

A. A little over 15 years.

Q. And for how long have you been working in the area in and around surrounding Suwannee County?

A. Since approximately 1968.

Q. Would it be a fair statement that soon after you assumed your duties in that area that you had the occasion to have investigated Sam Smith in the past?

A. Yes, sir, that's correct.

Q. Now, you indicated that he was arrested on November 18, 1976?

A. Yes, sir.

Q. And when did you first learn that there was a warrant for approval for Sam Smith's arrest?

A. On the afternoon of November the 17th.

Q. It's my understanding that you attempted on one occasion, on the 17th, to go to his home?

A. Yes, I went to his residence on the evening of the 17th.

Q. And for what purpose was that?

A. To effect his arrest.

Q. What time was that?

A. I can't be exact. I would have to approximate. I would say 5:30. It was still light but it was almost dusk, I would say.

Q. After 5:30 you made no attempt whatsoever to go back that evening to secure his arrest?

A. No, not after that one time. No, sir.

Q. Was there anything to prevent you from going back that evening so that he could be arrested in the privacy of his home rather than in the courthouse in Lake City?

A. Yes, sir, there was.

Q. All right, sir. Were there other FBI agents in the area?

A. Yes, sir.

Q. How many FBI agents were involved in the surveillance at the landfill?

(Short Pause.)

A. Again, this would be an approximate, I would say 12 to 14 agents.

Q. Were any of those 12 to 14 agents available to arrest Sam Smith on the night of the 17th or were they also tied up?

A. They would have been available.

Q. All right, sir. Do you know how the papers in Lake City were alerted to the fact that you were there to arrest Sam Smith?

A. No, I'm not aware if they were alerted. No, sir.

Q. You weren't aware that when you walked out with the Judge in cuffs that someone was there, a photographer, to take a photograph?

A. I observed no photographer taking photographs at that time. No, sir.

Q. You never saw a paper later that showed that photograph?

A. I saw a paper that showed a photograph taken in Jacksonville but not in Lake City, no, sir.

Q. All right. During this whole period of time after you were contacted by Sheriff Leonard did anyone in the FBI ever put Sam Smith under surveillance?

(Short Pause.)

A. Not as such, no, sir.

Q. In other words, no one was following him?

A. No, sir.

Q. There was never an order obtained from any court to have his phone tapped?

A. No, there was not.

Q. Either his home or his office?

A. Neither one. No, sir.

Q. Now, when you went with this other agent on November the 18th to the Judge's Chambers in the courthouse in Lake City did you take with you any device to record the statement that you have just testified to?

A. No. I was not prepared to record it. No, sir.

Q. Could you have recorded it?

A. If I would have taken the equipment, the tapes and so forth, I could have. But I didn't take them.

Q. You didn't take them. But the equipment necessary for the recording was available to you and available to other agents in your office?

A. Yes, sir, it would have been.

Q. All right. Now, it's my understanding that agents make out notes that are called 3-0-2 notes when they're involved in an investigation?

A. We make notes and then we later dictate what we call the FD 302 form from our notes which is typed up.

Q. And on this occasion you made notes and then you later dictated and from that came the 302 notes?

A. That is correct, sir.

Q. This is concerning the statement—

A. Yes, sir.

Q. —that you obtained from Sam Smith.

I believe that you testified that after the tape recording was played and began talking to Sam Smith about marijuana that he indicated, words to this effect, they weren't going to put it, the marijuana, in their pipes and smoke it; is that right?

A. That's correct.

Q. Do those words appear any place in your 302 notes?

A. No, they do not.

(Short Pause.)

Q. Isn't it true, Agent Ramsey, that during these events as they unfolded in the late summer 1976 that Sheriff Leonard indicated to you that he was having some misgivings and that he wanted to back out of this thing?

A. Yes, at one point.

Q. And to encourage him to go forward you mentioned to him the obstruction of justice statute; is that true?

A. That was one of several points I mentioned to him. Yes, sir.

Q. In effect you advised him that if he did not go forward, if he did not cooperate with the FBI he could be arrested and charged with obstruction of justice; is that right?

A. No. I did not advise him of that. No, sir.

Q. In effect you did that, though, didn't you?

A. As I recall what I stated, technically this was one of several things we were going over and discussing it and technically it could be looked on as an obstruction of justice if he failed to do his duty as a law enforcement officer. Yes, sir.

Q. Well, I mean, you wanted him to know that he could be charged with that; didn't you?

A. Yes. When I told him that it's possible.

Q. You say it's possible? You wouldn't have any reason for telling him that if that wasn't the impression that you wanted to leave; isn't that true?

A. It is correct that he could have been charged with that at a later date. Yes, sir.

Q. Wasn't that the impression that you wanted to leave with Sheriff Leonard?

A. I would say I wanted him to think about it. Yes.

Q. All right, sir. And in this statement that you obtained from Sam Smith he told you that Lee came to him?

A. That's correct.

Q. And this marijuana we have been talking about this was government marijuana?

A. Yes, it was.

Q. Marijuana that the FBI had obtained from customs?

A. That's correct.

Q. Transported eventually to Tallahassee?

A. Yes, sir.

Q. Loaded into your truck or in some truck.

A. Yes, sir.

Q. And then taken down to Suwannee County?

A. Yes, sir.

Q. Now, were you involved in the surveillance of the marijuana that was used to bait the trap back in September in Suwannee County?

A. Yes, sir, I was.

Q. That was government marijuana?

A. Not federal government marijuana, no.

Q. All right. In other words, on that occasion the government did not supply the marijuana?

A. That's correct.

Q. But on this occasion the government did supply the marijuana?

A. Yes.

Q. All right. As I understand the events at the landfill that night there were a number of agents there, as these vehicles left several agents and several vehicles were involved in either following or trying to find these vehicles; is that a fair statement?

A. That's correct.

Q. There was a helicopter involved?

A. Not that night, no.

Q. All right. That was the next day?

A. The following day, yes, sir.

Q. All right. It's my understanding that eventually some marijuana was located or found in some type of metal shed in Alachua County?

A. Yes, sir.

Q. And when the marijuana was recovered it was determined that there was 600 pounds missing?

A. Approximately 600 pounds.

Q. 600 pounds of government marijuana?

A. That's correct.

Q. And no one has been arrested for that?

A. Not for that particular charge, no, sir.

Q. And the marijuana has never been recovered?

A. No.

Q. All right.

MR. CACCIATORE: No further questions.

JUSTICE ENGLAND: Mr. Glick?

MR. GLICK: If I may have just one moment.

(Short Pause.)

MR. GLICK: We have no further questions.

JUSTICE ENGLAND: The floor is open for questions from the Senators.

Senator Lewis.

EXAMINATION

BY SENATOR LEWIS:

Q. As I understand it, when you met with Judge Smith in his Chambers and, again, advised him of his rights, you began to unfold the story and then the tape was played to him and he broke down. Did at that time he confess to you to this conspiracy, the bottom line in this whole package, did he tell you that he was involved with it and in the acquisition of this marijuana, possible sale of it?

A. Yes. After the tape was played, he did.

Q. He told you everything, that he was personally involved in this whole thing?

A. That's correct.

Q. Thank you.

JUSTICE ENGLAND: Senator Childers.

EXAMINATION

BY SENATOR DON CHILDERS:

Q. Agent Ramsey, I would like to ask was there any FDCLE agents that night that you had the truck under surveillance, were there any of those agents there also?

A. Not present on that night, no, sir.

Q. You spoke of two vehicles and did you or any of your agents follow those vehicles that night and apprehend either vehicle?

A. Not that night. The pickup truck was stopped the following day, on the 17th, around noon.

Q. Could you tell us why you did not if those were the two vehicles that went into the dump, you were expecting someone to come in there at that particular time, why those vehicles were not apprehended that night?

A. At that time we wanted to follow the vehicles to find out—we were under the impression that the man came up with the money and we would like to know where this marijuana was going to, how it was going to be disposed of. It was our plan to follow these vehicles until a point to where they were delivered somewhere. Unfortunately we lost the vehicle that night on surveillance.

Q. You mean 12 to 14 agents and you could not follow those two vehicles that night; is that right?

A. We lost them when the vehicle, I believe, discovered somebody was following it and they took measures to attempt to lose us and he was successful because of the weather conditions and the road conditions.

Q. Then the next communication you had was when this particular man, I don't recall the name, came into your apartment or your motel room and divulged his part in the scheme of Judge Smith; is that correct?

A. No. We stopped and we found the pickup the following day and the arrest was made on the 17th. We finally located the marijuana on the following day, on the—

Q. Why would you not involve the FDCLE agents under those conditions, under surveillance?

A. At the time it was just not done. They were involved up to the point of other surveillances that night. I could give you no particular reason. It was just covered by the FBI agents.

Q. It just seems strange to me that if you had that many agents there and you knew that there was going to be someone to come pick it up, the marijuana, that at least that many agents you would have been able to apprehend those two vehicles somewhere, I'm sure with all the walkie-talkies and the equipment that the FBI does have. And also it's been approximately two years and still no one has been arrested, according to your testimony, for the missing 600 pounds of marijuana on that particular night.

A. This part is an ongoing current investigation.

Q. Thank you.

JUSTICE ENGLAND: Senator Poston.

EXAMINATION

BY SENATOR POSTON:

Q. I would like to ask you just a couple of questions. One of them is whether the weather is good or bad doesn't the beeper work?

A. Yes, the beeper works.

Q. Well, if the beeper was active that night how could you lose them?

A. Maybe if I explain a little bit about the beeper. We had trouble, communications was one of our problems. The beeper, it depends on the conditions around where it's located. Sometimes you have to be within as close as a couple of hundred yards to hear it. At other times under ideal conditions you may be able to be back half a mile. In this particular case when we lost it we heard the beeper up to the point where he got off the interstate.

At that point he was driving at what I would estimate to be a normal rate of speed, 50, 55 miles an hour. He continued this for a short distance and then when he returned on the road he floored the vehicle. I was going up to speeds 80 and 90 miles an hour and the vehicle walked off and left me. After he got over a quarter of a mile, or however it was, we could no longer hear the beeper and could not follow it.

Q. You mean the pickup truck outran your automobile?

A. I was in a van at the time, surveillance van, and, yes, it did.

Q. Well, what happened to the Volkswagen?

A. We were having communications problems. There were only two vehicles that I knew of. At the time we followed the vehicles from Live Oak on Old U.S. 90 onto U.S. 90 until the pickup turned south on Interstate 75.

The pickup was driving quite a bit faster than the Volkswagen so the distance between them was growing. Because I could see the bundles and I knew the marijuana was hidden in the pickup and I wanted—there was only one other vehicle that I had communication with that was there and I made the decision to stick with the pickup because we didn't want the marijuana out of our sight.

At that time I didn't have any reason to believe there was any marijuana in the Volkswagen and so we followed it. I tried to leave instructions on the radio for somebody else to pick up the Volkswagen but as far as I know no one picked it up.

Q. Well, were all 12 or 14 of you in the van?

A. No, we were not. (Laughter)

Q. How many vehicles were involved with the 12 or 14 FBI agents?

A. At the point after the vehicles left the dump I only observed three other vehicles, FBI vehicles other than my own. And as we traveled on two of those I lost radio contact with and again I feel this is because of the weather.

Q. And do you all have, what, 50 AMP Motorolas or what do you normally use for intercommunications?

A. I'm sorry, I don't—I have no knowledge of that.

Q. Do you have mobile radios in each one of the vehicles?

A. Right. Well, in our cars we did have some vehicles that were rented that were not bureau vehicles and in those we had the small mobile units.

Q. What is the range of a mobile unit normally?

A. This would depend. Sometimes not over a mile, half a mile to a mile. At other times you may go five miles, again it's according to how high the antenna is of where you're reaching to and receiving from.

Q. Well, normally on a mobile unit in a vehicle normally you can intercept communication up to seven miles; can't you, at ground level?

A. That may be possible. I have been within half a mile and have been unable to pick him up under certain conditions. But I'm not an expert on radio and I can't relate, comment on that.

Q. Are they high band or low band?

A. Again, I believe it's low band but I wouldn't be certain on that.

Q. Well that would cause a skip that would create some problems. But you never found the Volkswagen the night that you were in pursuit of the truck and/or the Volkswagen?

A. We found it the following day, the Volkswagen and the truck.

Q. Was there any signs of any marijuana being hauled in the Volkswagen as opposed to just the truck?

A. No, there was not.

Q. Was it tested?

A. A search and examination of the Volkswagen was made and no signs of marijuana was found in it.

Q. No signs of marijuana were found?

A. That's correct.

Q. And the man Bradley was the one that was apprehended that had been driving the truck?

A. Yes. I arrested Richard Bradley at the truck.

Q. And there was a difference of about 600 pounds from the time that the truck appeared to be loaded until you apprehended Bradley?

A. That is correct. Now the marijuana was not found in the truck when he was arrested.

Q. None of it?

A. There was enough to get samples out to show there had been marijuana in the truck. The marijuana itself was located in a metal building where the pickup was first spotted and the beeper heard earlier that day, approximately an hour prior to Bradley's arrest.

Q. But nobody knows how many drops or pickups or whatever were made between the time he left the dump and the time he was apprehended?

A. Not from the time he was lost, sometime after midnight at 12:30-1:00 o'clock or so, no.

Q. Did he ever admit how many places he stopped that night?

A. Not to my knowledge, no.

Q. Well, he obviously made more than one stop, though, other than what he put in the shed, in the metal shed?

A. Again, this is part of an ongoing investigation. I can't comment on that point, sir.

Q. One further. Did he admit to putting all of it in a metal shed?

A. Mr. Bradley made no statement to me whatsoever, sir.

JUSTICE ENGLAND: Senator Spicola.

EXAMINATION

BY SENATOR SPICOLA:

Q. Mr. Ramsey, when is the first time you had any conversation with Sheriff Leonard about the possible involvement of Poss Lee and Judge Smith in a marijuana conspiracy?

A. The first time the name Poss Lee was used?

Q. Yes, or Judge Smith.

A. Well, the first conversation where Judge Smith's name came up was on July 27th of 1976. At that time Poss Lee's name was not used. On August 19, to the best of my recollection, I used the name of Poss Lee as being the middle man. And at that point I felt certain that it was Poss Lee.

Q. So that the first conversation you had with Sheriff Leonard about either of those two individuals would have been no earlier than July 22nd?

A. Concerning this matter, yes.

Q. Yes.

A. Yes, that's correct.

Q. Did he come to you or did you go to him? How did you contact each other on that occasion?

A. Actually, I believe July the 27th was a Monday or possibly a Tuesday. The prior Friday before that I had called the Sheriff's office in Live Oak on another matter. I talked to Sheriff Leonard. He asked me if I was going to be in the Live Oak area in the near future. I told him I would probably be over the first part of the following week. And so on July 27, I did go to Live Oak and I contacted Sheriff Leonard. He was not in his office. I got him on the radio and met him down in McAlpin, Florida.

Q. So he had asked you when you called him about an unrelated matter the Friday before, sometime before, that he wanted to discuss something with you?

A. That's correct, sir.

Q. He didn't give you any indication what it was about at that time?

A. Not on the phone, no, sir.

JUSTICE ENGLAND: Further questions?

Senator Scarborough.

EXAMINATION

BY SENATOR SCARBOROUGH:

Q. I have just one or two, Mr. Chief Justice. July 27th was the first date that Sheriff Leonard contacted your office about this conspiracy. Are you at liberty to tell us whether or not any other FBI investigations were being conducted in Suwannee County, ongoing prior to that date?

A. I'm not sure I follow you. Maybe I can explain it this way. I had covered—

Q. I will rephrase the question if you'd like. I recall back—oh, I can't—I think about '75, at that time where there were some articles in the newspapers about FBI investigation of

potential corruption in Lake City, Live Oak and Suwannee County areas. Had your agency been conducting any investigation of prostitution and things of this nature prior to Sheriff Leonard's contacting you?

A. Yes, sir. This is an ongoing investigation which I—

Q. Was it ongoing prior to July 27th?

A. Yes, some parts of it were, yes.

Q. One last question. We're rather proud of our Florida Department of Criminal Law Enforcement. I'm curious why there was never any request by the FBI for the FDCLE to assist in this investigation. Is there any specific reason why that wasn't done?

A. There is no reason that particular night. There was discussions with Florida Department of Criminal Law Enforcement on this matter up including November 16th.

SENATOR SCARBOROUGH: Thank you.

SENATOR BARRON: One question, Your Honor, if I may.

JUSTICE ENGLAND: Senator Barron.

EXAMINATION

BY SENATOR BARRON:

Q. You might have covered this. But did anybody that was observing the scene there at the landfill see the number of people that came there that night?

A. No. The ones located right at the spot, again, because of the weather conditions—you would have to see it almost to believe it. They couldn't see. They merely heard. When the vehicles passed me and the lights shone in the windows, I could observe at that time two people in a Volkswagen or what appeared. That's all I could see in it, two individuals, one person in the pickup truck.

Q. Did you conclude that that's what was out there, three?

A. Based on what I saw at that time.

Q. Did anybody recognize Judge Smith? I assume they didn't, or any other person that evening as such at that time?

A. No, they did not.

JUSTICE ENGLAND: Further questions? Senator Wilson?

EXAMINATION

BY SENATOR WILSON:

Q. Just one question. On this July 27th when you went to see Sheriff Leonard, could you tell me what he told you at that meeting when you walked in, he said he wanted to talk to you about something but did not tell you over the phone what it was. When you went to see him, what did he tell you on that date?

A. He advised me at that time that an individual had contacted him and stated that Judge Smith, he had some marijuana—Sheriff Leonard had some marijuana in the Suwannee County Jail which Judge Smith would like to get a hold of and also something to the effect that he would probably need some help in the election and so forth and that possibly Judge Smith could help him in the election if he could get together with Judge Smith on this marijuana.

Q. Did he identify who had contacted him?

A. Not on that day, no, he did not.

Q. But he did name Judge Smith as being someone who supposedly wanted to get with him on it?

A. Yes, ma'am. That's correct.

JUSTICE ENGLAND: Senator Lewis?

EXAMINATION

BY SENATOR LEWIS:

Q. Agent Ramsey, just pursuing a little bit further, I just wasn't too quick, maybe. You said that the Judge 'fessed up, the bottom line was he was involved in this whole thing, conspiracy. Did he ever sign a statement to that effect after you got it typed up and written up? Did he ever 'fess up to that to the extent that he signed his name on a confession?

A. No, he did not. It was never written up for him to read and sign, no, sir.

JUSTICE ENGLAND: Further questions?

(No response.)

JUSTICE ENGLAND: Any reason, Counsel, that this witness cannot be excused?

REPRESENTATIVE RISH: Not so far as we are concerned, Judge.

MR. CACCIATORE: Your Honor, we have no objection to the witness being excused.

JUSTICE ENGLAND: Witness will step down and be excused.

(Witness excused.)

JUSTICE ENGLAND: Mr. Rish?

REPRESENTATIVE RISH: Your Honor, that concludes our witnesses for the day. And we are reasonably certain that tomorrow morning we will rest our case. However, we will not make that announcement until tomorrow morning. We will sleep on it tonight to make certain there is nothing else we would like to put in.

At this time we anticipate the House Managers will have nothing further to offer in this proceeding except by way of rebuttal if we need it.

JUSTICE ENGLAND: Recognize Senator Brantley.

SENATOR BRANTLEY: Yes, Mr. Justice, on advice of Mr. Cacciatore, his witnesses are not able to be here until 9:00 o'clock tomorrow morning. So I would like to modify the previous announcement, if I might, Mr. Justice, that instead of convening at 8:00 o'clock, that we convene at 9:00 o'clock.

JUSTICE ENGLAND: Any objections?

(No response.)

JUSTICE ENGLAND: Any announcements that have to be made this evening?

(No response.)

JUSTICE ENGLAND: If not, the Senate will stand in recess until 9:00 a.m. tomorrow.

The Senate, sitting as a Court of Impeachment, adjourned at 6:50 p.m. to reconvene at 9:00 a.m., Friday, September 15, 1978.